

No. 1-14-0488

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

FIRST HORIZON HOME LOANS, A DIVISION OF)	Appeal from the
TENNESSEE BANK N.A. SUCCESSOR BY MERGER)	Circuit Court of
TO FIRST HORIZON HOME LOAN CORP., f/k/a FT)	Cook County
MORTGAGE COMPANIES d/b/a CARL I. BROWN)	
MORTGAGE,)	No. 08 CH 2631
)	
Plaintiff-Appellee,)	
)	Honorable
v.)	Anthony C. Kyriakopoulos,
)	Judge Presiding.
SHARON MURPHY a/k/a SHARON E. MURPHY and)	
CHARLES PRICE,)	
)	
Defendants-Appellants.)	
)	

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* Affirming the judgment of the circuit court of Cook County where plaintiff provided notice to defendants regarding the hearing on the motion to confirm the sale and the circuit court did not abuse its discretion in confirming the sale without setting a briefing schedule.

¶ 2 Defendants Sharon Murphy (Murphy) and Charles Price (Price) (collectively defendants)

appeal from the circuit court of Cook County's order approving the report of sale and distribution of the property commonly known as 3956 West 172nd Street, Country Club Hills, Illinois (the property) for plaintiff First Horizon Home Loans, a Division of First Tennessee Bank, N.A., successor by merger to First Horizon Home Loan Corp. f/k/a FT Mortgage Companies d/b/a Carl I. Brown Mortgage (plaintiff). On appeal, defendants contend that: (1) they did not receive proper notice of the motion to confirm the sale; (2) the circuit court did not set a briefing schedule on the motion to confirm the sale as required by section 1508(b) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(b) (West 2014)); and (3) because of these issues they were denied due process. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 Initially, we note that the record does not contain any reports of proceedings. The common law record reveals the following relevant information.

¶ 5 On February 2, 2000, FT Mortgage Companies d/b/a Carl I. Brown Mortgage (FT Mortgage) extended a mortgage loan to defendants in the amount of \$179,704 and secured by a mortgage on the property. Thereafter, on January 23, 2008, plaintiff (successor by merger to FT Mortgage) filed its complaint to foreclose the mortgage, alleging defendants were in default for failing to pay their mortgage payments as of June 2007.

¶ 6 On July 31, 2008, defendant Price appeared in court *pro se* and both defendants were granted leave to file their appearances and answer or otherwise plead to the complaint. On August 22, 2008, only Price filed his appearance, answer, and affirmative defenses. Almost one year later, on June 2, 2009, after the matter was fully briefed and argued, the circuit court granted plaintiff's motion for summary judgment against Price, motion for default judgment against Murphy, and entered a judgment of foreclosure and sale against both defendants. The property

was subsequently sold on September 3, 2009, at a judicial sale.

¶ 7 Thereafter, plaintiff moved to confirm the sale. On November 13, 2009, the law firm of Rosenfield, Kaplan & Halperin (the Rosenfield Firm) filed a motion for leave to file an additional appearance *instanter* on behalf of defendants.¹ On the day the motion was set to be heard, December 16, 2009, defendants filed a petition in objection to the motion to confirm the sale; however, the order approving the sale was entered.

¶ 8 On January 15, 2010, another attorney Martin A. Spencer (Spencer) filed a motion to dismiss based on defective service. Spencer filed a general appearance on behalf of defendants; however, the Rosenfield Firm never sought to withdraw as defendants' counsel. While the motion to dismiss was being briefed, the circuit court stayed the eviction of defendants until further order of court. On June 17, 2010, the circuit court denied the motion to dismiss, finding that defendants had waived any arguments related to lack of service. Defendants appealed this order; however, on May 9, 2011, their appeal was withdrawn pursuant to an agreed order. That order provided that the appeal would be dismissed and the order approving the sale and the judgment of foreclosure would be vacated. The order further provided that defendants would be allowed to file an answer to the complaint.

¶ 9 Spencer subsequently filed a motion for leave to withdraw as counsel for defendants, and on July 28, 2011, it was granted. Defendants were provided 21 days to file an appearance and answer or otherwise plead.

¶ 10 No pleading was filed by defendants, and on March 16, 2012, plaintiff filed a motion for default, judgment of foreclosure and sale, and a motion for summary judgment. On May 10,

¹ The record does not include an order granting the motion for leave to file an appearance *instanter*. Defendants, however, do not contest that the Rosenfield Firm was their attorney of record.

2012, a briefing schedule was entered on the motions. Defendants filed a *pro se* appearance and answer on June 7, 2012.

¶ 11 On August 1, 2012, the circuit court set another briefing schedule on plaintiff's motions and on September 17, 2012, defendants were again granted 21 days to file an answer or appearance. Plaintiff's motions were entered and continued to October 10, 2012, when the circuit court entered the judgment of foreclosure and sale. On September 25, 2013, the property was sold at judicial sale to plaintiff as the highest bidder. Plaintiff filed its motion to confirm the sale on October 13, 2013, and the matter was noticed for hearing on January 13, 2014. The motion was noticed to defendants' counsel of record, the Rosenfield Firm, as well as to "Unknown Occupants" at the property.²

¶ 12 Meanwhile, on November 22, 2013, Price filed a *pro se* "emergency motion to vacate all orders to enforce foreclosure/sale order/eviction." Pertinent to this appeal, Price raised numerous arguments pursuant to section 1508 of the Foreclosure Law (735 ILCS 5/15-1508 (West 2012)). Specifically, Price argued that he did not receive notice of the sale under sections 1508(b-5) and 1508(c) of the Foreclosure Law (735 ILCS 5/15-1508(b-5), (c) (West 2012)). That same day, the motion was denied without prejudice, the circuit court finding that it was not an emergency and could be scheduled in the "normal course."

¶ 13 On January 13, 2014, the circuit court entered an order approving the report of sale and distribution and an order of possession.

¶ 14 On February 11, 2014, Price filed a notice of appeal, which was subsequently amended to include Murphy.

² The record on appeal does not include a certificate of service of the motion to confirm the sale. The parties, however, do not raise this as an issue before this court.

¶ 15

ANALYSIS

¶ 16 On appeal, defendants contend that: (1) they did not receive notice of the motion to confirm the sale; (2) the circuit court did not set a briefing schedule and conduct a hearing on the motion to confirm the sale as required by section 1508(b) of the Foreclosure Law (735 ILCS 5/15-1508(b) (West 2014)); and (3) because of these failures they were denied due process.

¶ 17

Standard of Review

¶ 18 Defendants appeal the order granting plaintiff's motion to confirm the sale. Defendants assert that the standard of review is *de novo*, "because this case was essentially adjudicated for [sic] short of a trial on issues that are purely legal in nature, or do not involve a weighing or adjudication of the evidence."

¶ 19 It is well settled that the standard of review for a motion to confirm the sale is an abuse of discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008); *CitiMortgage, Inc. v. Lewis*, 2014 IL App (1st) 131272, ¶ 31. "The circuit court abuses its discretion if it committed an error of law or where no reasonable person would take the view adopted by the court." *US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 18. The party opposing the foreclosure sale bears the burden of proving that sufficient grounds exist to disapprove the sale. *Bayview Loan Servicing, LLC v. 2010 Real Estate Foreclosure, LLC*, 2013 IL App (1st) 120711, ¶ 32.

¶ 20 We now turn to address the substance of defendants' arguments on appeal. We first consider whether defendants were properly provided notice of the motion to confirm the sale.

¶ 21

Notice

¶ 22 Defendants assert that plaintiff failed to properly serve them with notice of the motion to confirm the sale. Notice and an opportunity to be heard are fundamental cornerstones of due

process. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 28. Cook County Circuit Court Rule 2.1(c)(i) (eff. Aug. 21, 2000), entitled "Notice of Hearing of Motions," provides that notice of "the hearing of all motions shall be given in the manner and to the persons described in Supreme Court Rule 11." Illinois Supreme Court Rule 11(a) (eff. July 1, 2013) states that if a party is represented by an attorney of record, service shall be made upon the attorney and, otherwise, service shall be made upon the party. An "attorney of record" is one who has "fil[ed] an appearance or other pleading with the court." *Jayko v. Fraczek*, 2012 IL App (1st) 103665, ¶ 26. In addition, "[w]hen more than one attorney appears for a party, service of a copy upon one of them is sufficient." Ill. S. Ct. R. 11(c) (eff. July 1, 2013).

¶ 23 Initially, we acknowledge that the record does not include the proof of service by mail of the notice of the motion to confirm the sale. "It is the proof of service by mail portion of the notice which controls the determination as to whom it was mailed." *Commonwealth Eastern Mortgage Co. v. Vaughn*, 179 Ill. App. 3d 129, 133 (1989). Defendants, however, do not raise this issue and, even if they had, it was their burden as appellants to produce a sufficiently complete record of the proceedings to support their claims of error, which would include the proof of service or lack thereof. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392. With that in mind, we turn to defendants' argument that the notice should have been provided to them because the Rosenfield Firm was their "former attorney[]" and defendants had a *pro se* appearance on file.³

¶ 24 The record reveals that the Rosenfield Firm did not withdraw from the case and, thus, were still defendants' attorney of record. See *Firkus v. Firkus*, 200 Ill. App. 3d 982, 989 (1990)

³ Defendants acknowledge that the notice of motion was mailed to the Rosenfield Firm and also to "unknown occupants" at the property where they admittedly reside.

("[A]n attorney's written appearance on behalf of a client before any court in this State bids the attorney to continue to represent that client in that cause until the court, after notice and motion, grants leave for the attorney to withdraw ***."); Ill. S. Ct. R. 13(c) (eff. July 1, 2013).

Accordingly, plaintiff complied with Rule 11 when it mailed the notice of motion to the Rosenfield Firm. See Ill. S. Ct. R. 11(a) (eff. July 1, 2013). Even if defendants were represented by additional counsel, it was proper for plaintiff to mail the notice of motion to the Rosenfield Firm because "service of a copy upon one of [the attorneys for a party] is sufficient." See Ill. S. Ct. R. 11(c) (eff. July 1, 2013); *Firkus*, 200 Ill. App. 3d at 990 (finding when more than one attorney appears for a party, service of a copy upon one of them is sufficient). Defendant's claim that the notice of motion should have been sent to them because they had a *pro se* appearance on file also fails. See *Vaughn*, 179 Ill. App. 3d at 134 (a defendant who filed a *pro se* appearance was not entitled to service of the notice of motion where an attorney of record had an appearance on file). We conclude that plaintiff's notice of its motion to confirm the sale strictly complied with both Cook County Circuit Court Rule 2.1(c)(i) and Illinois Supreme Court Rule 11.

¶ 25 We further note that defendants' assertion that notice was not sent to them is belied by the record where Price raised numerous arguments pursuant to section 1508 of the Foreclosure Law in his "emergency motion to vacate all orders to enforce foreclosure/sale order/eviction," thereby demonstrating that he was aware that the property had been sold and that plaintiff was moving forward to confirm the sale of the property. Price's motion was denied without prejudice, and he was directed to schedule it in the "normal course." Price failed to do so. As the record demonstrates since Price was aware of the motion to confirm the sale, it is disingenuous for defendants to now raise this argument regarding notice on appeal.

¶ 26

Hearing

¶ 27 Defendants next contend that the circuit court committed reversible error when it confirmed the sale of the property without setting a briefing schedule and conducting a hearing as they assert is required by section 1508(b) of the Foreclosure Law (735 ILCS 5/15-1508(b) (West 2014)). In response, plaintiff argues that section 1508(b) of the Foreclosure Law does not require the circuit court to set a briefing schedule prior to confirming a sale and that, in fact, the circuit court has the discretion to determine the extent of the hearing afforded to the parties. In addition, plaintiff asserts that defendants have provided no citations to authority for this proposition in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) and also have not provided this court with a report of proceedings or a bystander's report in contravention of Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). Without such a report, plaintiff urges this court to defer to the circuit court's ruling and uphold the order approving the sale.

¶ 28 Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) requires an appellant to include in its brief an "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). It is well settled that a contention that is supported by some argument but does not cite any authority does not satisfy the requirements of Rule 341(h)(7), and bare contentions that fail to cite any authority do not merit consideration on appeal. *Bank of America, N.A. v. Kulesza*, 2014 IL App (1st) 132075, ¶ 18. Defendants fail to cite any authority which indicates that a briefing schedule is a prerequisite for the circuit court to conduct a hearing on a motion to confirm a sale. Defendants have further failed to cite any authority that requires a circuit court to enter a briefing schedule when the defendants were not in court to request that a briefing schedule be set. In fact, "it [is] well within the circuit court's discretion to grant or withhold permission regarding a briefing schedule." *TIG Ins. Co. v. Canel*, 389 Ill. App. 3d 366,

375 (2009). Because defendants have failed to support their argument with citations to authority in violation of Rule 341(h)(7) (eff. Feb. 6, 2013) we find this argument to be forfeited. See *Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1040 (2009) (arguments that do not satisfy Rule 341 do not merit consideration on appeal and may be rejected for that reason alone). Forfeiture, however, is a limitation on the parties and not the court (*Maniez v. Citibank, F.S.B.*, 404 Ill. App. 3d 941, 948 (2010)), thus we now turn to consider defendants' arguments.

¶ 29 Section 15-1508(b) of the Foreclosure Law (735 ILCS 5/15-1508(b) (West 2014)) governs a trial court's discretion to vacate the sale. *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 18. Section 1508(b) contains an express provision for hearings and provides in pertinent part:

"Upon motion and notice in accordance with court rules applicable to motions generally, which motion shall not be made prior to sale, the court shall conduct a hearing to confirm the sale. Unless the court finds that (i) a notice required in accordance with subsection (c) of Section 15-1507 was not given, (ii) the terms of the sale were unconscionable, (iii) the sale was conducted fraudulently, or (iv) justice was otherwise not done, the court shall then enter an order confirming the sale." 735 ILCS 5/15-1508(b) (West 2014).

Our supreme court has interpreted this provision to impose a "mandatory obligation" on the circuit court to "conduct a hearing on confirmation of a judicial sale where a motion to confirm has been made and notice has been given." *Household Bank, FSB*, 229 Ill. 2d at 178. The provisions of section 15-1508 of the Foreclosure Law have been construed as conferring on circuit courts broad discretion in approving or disapproving judicial sales. *Id.* "While the provision provides for a hearing, the extent of the hearing afforded a mortgagor is left to the

sound discretion of the circuit court." *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 6 (2006) (citing *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105, 115 (1993)). The party opposing the foreclosure sale bears the burden of proving that sufficient grounds exist to disprove the sale. *Bayview Loan Servicing, LLC*, 2013 IL App (1st) 120711, ¶ 32.

¶ 30 The appropriate role for this court, then, would be to review the proceedings underlying the circuit court's ruling on the motion to confirm the sale. In this case, the record reflects that on January 13, 2014, the motion to confirm the sale was presented to the circuit court for hearing and an order approving the sale was entered. Our ability to further review this issue is hampered by defendants' failure to include in the record a transcript from this day. Defendants also failed to submit a report of proceedings, a bystander's report, or an agreed statement of facts as required by Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). Defendants, as appellants, have the burden to present this court with a sufficiently complete record on appeal. *Bayview Loan Servicing, LLC*, 2013 IL App (1st) 120711, ¶ 26. A court of review will resolve any doubts that arise from an incomplete record against the appellant (*Foutch*, 99 Ill. 2d at 391-92) and, absent a sufficient record on appeal, "it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis" ((Internal quotation marks omitted.) *Standard Bank and Trust Co. v. Madonia*, 2011 IL App (1st) 103516, ¶ 24). In the absence of such a transcript, this court will not resort to speculation regarding the proceedings below, but will presume that the circuit court's ruling was correct at law and supported by a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92. Defendants have not demonstrated that they had a defense to the motion to confirm the sale.

¶ 31 Even if we were to consider defendants' argument, we find that the circuit court did not abuse its discretion when it confirmed the sale of the property. First, defendants were provided

notice of the motion to confirm the sale and had ample time to file a response to the motion prior to the hearing date, but failed to do so. Second, defendants were provided the opportunity to contest the confirmation of the sale in open court, but failed to appear. Defendants assert that their prior participation in the litigation made it even more egregious that the circuit court did not set a briefing schedule in their absence; however, this fact actually cuts against defendants. The record demonstrates that defendants actively participated in this foreclosure action for five years. In addition, defendants were well aware of foreclosure procedure, as the first judicial sale of the property had been confirmed and then later vacated by the circuit court. Lastly, defendants argue that the circuit court's failure to enter a briefing schedule constituted reversible error; however, section 1508(b) provides that the circuit court *shall* confirm the sale unless the party seeking to set aside the sale can prove one of the four subcategories of section 1508(b) exists. 735 ILCS 5/15-1508(b) (West 2014); *McCluskey*, 2013 IL 115469, ¶ 18; *Bayview Loan Servicing, LLC*, 2013 IL App (1st) 120711, ¶ 32. Here, defendants fail to assert why a hearing was necessary in this case. Defendants simply state that they "would have wanted time and opportunity to contest the motion for confirmation since [they] had appeared multiple time[s] and filed pleading[s] and hired counsel to contest this foreclosure action and save [the] family residence for the last 7 years or since 2008." This is not a proper basis under section 1508(b). See 735 ILCS 5/15-1508(b) (West 2014). Moreover, courts will not refuse to confirm a sale "merely to protect an interested party 'against the result of his own negligence.'" *McCluskey*, 2013 IL 115469, ¶ 19 (quoting *Schultz v. Milburn*, 366 Ill. 400, 405 (1937)). Consequently, we affirm the circuit court's order approving the sale.

¶ 32

Due Process

¶ 33 To the extent defendants have otherwise argued that they have been denied procedural

due process, they have failed to provide reasoned argument or citation to pertinent authority in support of their arguments. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (the argument section of an appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"). Furthermore, defendants have not explained how the few cases they have cited support their arguments and, regardless, we find the cases to be distinguishable. See *Segers v. The Industrial Commission*, 191 Ill. 2d 421 (2000); *Stillo v. State Retirement Systems*, 305 Ill. App. 3d 1003 (1999); *El Sauz, Inc. v. Daley*, 328 Ill. App. 3d 508 (2002). Accordingly, under these circumstances, we conclude that defendants' procedural due process rights were not violated and that the circuit court did not abuse its discretion in approving the sale.

¶ 34

CONCLUSION

¶ 35 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 36 Affirmed.