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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PNC BANK, N.A.,)	
)	
Plaintiff-Appellee,)	
)	
v.)	Appeal from the Circuit Court
)	of Cook County.
JESUS VELASCO,)	
)	
Defendant-Appellant)	No. 12 CH 22622
)	
(Nancy Munoz a/k/a Nancy Munoz Duran, PNC)	
Bank, N.A., successor by merger to National City)	The Honorable
Bank, successor by merger to Mid America Bank,)	Robert Senechalle,
FSB, Unknown Others, Generally, and Nonrecord)	Judge, presiding.
Claimants,)	
)	
Defendants).)	

JUSTICE HYMAN delivered the judgment of the court.
Justices Lavin and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied or struck defendant's multiple motions to quash service of process where defendant's counsel failed to appear to present the motions, and failed to comply with the Illinois Mortgage Foreclosure Law's time limit on jurisdictional challenges.

¶ 2 Defendant Jesus Velasco appeals the denial and striking of his four motions to quash service of process. Finding no error, we affirm. In light of Velasco's failure to appear twice for hearing on his motions to quash service, the court did not abuse its discretion in entering an order striking the motion with prejudice. Moreover, Velasco failed to meet the time bar to a jurisdictional challenge in section 15-1505.6. 735 ILCS 5/15-1505.6(a) (West 2012).

¶ 3 **BACKGROUND**

¶ 4 In 2006, plaintiff Jesus Velasco purchased and mortgaged a home at 442 N. Melrose Ave., Hillside, IL. In June 2012, plaintiff PNC Bank, N.A., filed a complaint to foreclose against Velasco and others. The next month, PNC filed an affidavit of a special process server that indicated Velasco was served via substitute service on Carlos Williams on June 20. A second affidavit from the special process server stated that Williams, age 30, was Velasco's roommate.

¶ 5 Velasco did not appear, answer, or otherwise plead to the complaint, so PNC filed a motion for default judgment and sale, which the circuit court granted on November 28, 2012. Velasco did not appear at the November 28 hearing, despite PNC having served him with the motion papers at his home address. On February 5, 2013, Velasco's counsel filed an appearance. On that same day, PNC filed a notice of sale, which it mailed to Velasco at his home address, advising defendants that the judicial sale would take place on March 1, 2013.

¶ 6 On February 26, 2013, Velasco filed a motion to quash service and stay the judicial sale (the first motion to quash), for presentment on February 28, in advance of the judicial sale. But on February 28, no one appeared for Velasco and the trial court struck Velasco's motion "for failure to appear," noting that it had called the case twice. The property was sold on March 1 to PNC. On March 2, PNC filed a motion for an order approving the sale, which it set for May 16, 2013.

¶ 7 Two days before the hearing on PNC's motion for an order approving the sale, Velasco filed an emergency motion to quash service (the second motion to quash), which the court denied without prejudice, finding that no emergency existed. The trial court's order indicated that Velasco could schedule his motion in normal course with the clerk's office.

¶ 8 The trial court approved the sale and ordered possession of the property to pass to PNC Bank within 30 days of May 16, 2013. Velasco did not appear on May 16, and filed a motion to quash service (the third motion to quash), setting it for July 19. He argued that Williams does not reside at the property, and that his motion was proper under section 15-1505.6 of the Illinois Mortgage Foreclosure Law. 735 ILCS 5/15-1505.6(a) (West 2012). On July 19, the motion was continued for hearing until August 1. But, on August 1, no one appearing for Velasco, the trial court struck the motion "with prejudice."

¶ 9 On August 28, 2013, Velasco filed yet another motion to quash service, set for hearing on November 6 (the fourth motion to quash). The trial court set briefing and scheduled an argument on the fourth motion to quash for January 14, 2014. The hearing took place as scheduled and on February 13, 2014, the trial court issued a memorandum opinion and order denying Velasco's motion to quash service. The trial court noted that both of Velasco's non-emergency motions to quash were stricken when no one appeared for Velasco, and took the fourth motion to quash as a motion to reconsider. The trial court stated, "Between the first striking of his motion and its re-filing on [May 16, 2013], the judicial sale was confirmed by the court. Although the record is clear that Velasco knew that [PNC Bank] would be presenting its motion to confirm the judicial sale on the morning of May 16, 2013, Velasco chose not to appear at the hearing for the confirmation of the sale." The trial court also held that Velasco had not filed his motion within the 60 days' time limit in section 15-1505.6. 735 ILCS 5/15-1505.6(a) (West 2012).

¶ 10

ANALYSIS

¶ 11

Velasco argues that the trial court erred: (i) in denying his fourth motion to quash; (ii) in denying his motion to reconsider; and (iii) in applying the time bar to jurisdictional challenges in section 15-1505.6. He further asserts that, if the trial court had reached the merits of his motion to quash service of process, the court should have set aside the order of default. Because the circuit court did not err, we decline to reach the merits of whether Velasco was properly served.

¶ 12

Motion to Quash Service

¶ 13

Velasco argues that the circuit court erred in its February 2014 order, which denied his fourth motion to quash service of process based on the court's previous dismissal with prejudice. Velasco asserts that his failure to appear did not constitute an abandonment of his motion to quash. We disagree. We review for an abuse of discretion. *City of Belleville v. Miller*, 339 Ill. 360, 364 (1930).

¶ 14

"The intention of the court is determined by the order entered, and where the language of the order is clear and unambiguous, it is not subject to construction." *Won v. Grant Park 2, LLC*, 2013 IL App (1st) 122523, ¶ 33. Where the trial court strikes a motion, the court is not ruling on the motion's merits. *Belluomini v. Lancome*, 207 Ill. App. 3d 583, 585-86 (1990). But, where a motion is stricken "with prejudice," that language essentially operates as a final disposition. *Won*, 2013 IL App (1st) 122523, ¶ 33. A party cannot refile a motion that a court has stricken with prejudice until it removes the "with prejudice" language, either by moving to amend, vacate, or reconsider the order. See *Workman v. St. Therese Medical Center*, 266 Ill. App. 3d 286, 291 (1994) (stricken motion reinstated after court granted of motion to vacate striking order).

¶ 15

Velasco filed his fourth motion to quash only weeks after the trial court struck with prejudice his third motion to quash. Striking with prejudice acts as a final disposition of the

motion to quash. See *Won*, 2013 IL App (1st) 122523, ¶ 33 (Intention of the court determined by order entered, and where language of the order is “with prejudice,” it is clear and unambiguous).

¶ 16 Velasco argues that the trial court should not have found that he abandoned his third motion to quash. Velasco's assertion ignores the fact that on two occasions he failed to appear to present his motion. Accordingly, we do not believe the trial court erred in finding the third motion abandoned. Velasco's failure to diligently pursue his motion constitutes abandonment. See *People v. Johnson*, 159 Ill. 2d 97, 123 (1994) (finding motion abandoned by failing to pursue it within reasonable time after filing).

¶ 17 Velasco relies on the reasoning in *Clinton Co. v. Eggleston*, 78 Ill. App. 3d 552 (1979) to argue that he did not abandon his motion, but that case is readily distinguishable. In *Eggleston*, the plaintiff filed a forcible entry and detainer action against the defendants, who were husband and wife. *Id.* at 552-53. The plaintiff served the husband by substitute service but never served the wife. *Id.* at 553. The court entered a default judgment against the defendants, who later appeared by counsel and filed a petition to quash service. *Id.* at 553-54. The defendants failed to appear to present the motion to quash, and the court struck the motion. *Id.* at 554. The defendants filed a second motion to quash, and while they again failed to appear at the hearing, the court heard the testimony of the deputy who served the summons. *Id.* The deputy testified that he may have left the summons at the wrong apartment with a person who did not reside with the defendants. *Id.* at 556. The trial court then struck the motion to quash service with prejudice. *Id.* at 554. The appellate court reversed, reasoning that the circuit court did not have jurisdiction to enter the default judgment over the wife, who was never served, and also found that the deputy, by his own admission, did not properly serve the husband. *Id.* at 555-57.

¶ 18 While the defendants in *Eggleston*, like Velasco, failed to appear to prosecute their motion to quash, the circuit court in *Eggleston* held an evidentiary hearing on the motion before striking it with prejudice. The deputy's testimony destroyed the presumption of valid service that his affidavit created. See *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 24 ("Courts 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."); *Mordecia v. Michicich*, 45 Ill. App. 2d 238, 244 (1963) (same). No evidentiary hearing was held on Velasco's motion.

¶ 19 Moreover, in *Eggleston*, the plaintiff failed to serve the wife, voiding the default judgment against her. Velasco does not argue that PNC failed to serve another party. We also note that defendant's counsel in *Eggleston* presented an excuse for failing to appear at the evidentiary hearing on the motion to quash. *Eggleston*, 78 Ill. App. 3d at 554-55 (noting delays at criminal court's building and car trouble). Velasco's counsel presented no excuse to the trial court as to why on two occasions he failed to appear to present the motion to quash, and we will not consider his explanation in a footnote in his opening brief because it is outside the record. See *Keener v. City of Herrin*, 235 Ill.2d 338, 346 (2009) (In general, reviewing court limited to record before it and appellant cannot raise matters outside record).

¶ 20 The holding in *Eggleston* does not give an attorney permission to skip hearings without consequences. The trial court reasonably struck with prejudice Velasco's third motion to quash after he twice failed to appear to present the motion to the court. Accordingly, we find no abuse of discretion.

¶ 21 Section 15-1505.6

¶ 22 Velasco next argues that the trial court erred in denying his motion to reconsider the striking of his third motion to quash. We disagree. We review the denial of a motion to reconsider for an abuse of discretion. *In re Marriage of Epting*, 2012 IL App (1st) 113727, ¶ 24.

¶ 23 The purpose of a motion to reconsider is to bring to the trial court's attention to: (i) newly discovered evidence not available at the time of the hearing; (ii) changes in the law; or (iii) errors in the court's previous application of existing law. *In re Marriage of Rogers*, 2015 IL App (4th) 140765, ¶ 61. Velasco raises four errors regarding the circuit court's refusal to reconsider the striking of his third motion to quash.

¶ 24 Velasco first argues that the circuit court erred in applying section 15-1505.6 because PNC Bank did not raise that statute in its briefs. While a party's failure to raise an argument results in waiver or forfeiture of that argument (*Owens v. Department of Human Rights*, 403 Ill. App. 3d 899, 926 (2010)), waiver is a limitation on the parties, not the court, "which has the responsibility for a just result." *Central Illinois Public Service Co. v. Allianz Underwriters Ins. Co.*, 244 Ill. App. 3d 709, 713 (1993). We also note that Velasco raised section 15-1505.6 in his third motion to quash. Accordingly, it was not unreasonable for the court to rely on that section when reconsidering the striking of the third motion.

¶ 25 Velasco next argues that section 15-1505.6 does not apply to him. We disagree. Section 15-1505.6 "requires that a motion to quash service of process in a residential foreclosure action must be brought within 60 days of the date that the moving party files an appearance or participates in a hearing without filing an appearance, unless the court grants an extension for good cause." *GreenPoint Mortgage Funding, Inc. v. Poniewozik*, 2014 IL App (1st) 132864, ¶ 1;

735 ILCS 5/15-1505.6(a) (West 2012). Velasco filed his appearance on February 5, 2013. Thus, he had until April 6, 2013 to file his motion to quash. He filed his first motion to quash on February 26, which the trial court struck without prejudice two days later when Velasco failed to appear at the presentment hearing. Velasco did not file his second motion to quash until May 14, well after the 60 deadline required in section 15-1505.6.

¶ 26 According to Velasco, the circuit court should have treated his second motion (along with the third and fourth) as continuations of his first. But, nothing in the record indicates the court continued the first motion. When section 15-1505.6 requires the moving party to "file" its motion to quash service within 60 days of his or her appearance, it means the motion must be presented to the court (not necessarily ruled on, but presented). If we were to accept Velasco's interpretation, a party could file a motion to quash within 60 days of appearing, fail to present the motion, and—after the trial court strikes it—turn around and refile the motion again, and again, claiming compliance by simply “filing.” Allowing this kind of behavior would not only encourage abuse of the judicial system, but undermine a foreclosure by unreasonably prolonging it for months, if not years. As we observed in *GreenPoint Mortgage Funding, Inc.*, at ¶ 16, on the legislative history of section 15-1505.6, “At one proceeding, a sponsor stated that the proposed law ‘deals with the time frame of when somebody can bring a motion to quash service in a foreclosure action’ and ‘*eliminates the ability to bring that motion late and stall these proceedings.*’ *** [I]t is basically to limit the ability to file these motions to quash service that slow down these actions, and it can happen on either side.’ 97th Ill. Gen. Assem., Senate Proceedings, May 17, 2011, at 155 (statements of Senator Dillard).” (emphasis added). We will not interpret a statute to permit the absurd result that Velasco's argument leads. See *In re Application of the County Treasurer & ex officio County Collector*, 2013 IL App (1st) 130103, ¶

9 ("We always presume that the legislature did not intend to create absurd, inconvenient, or unjust results.").

¶ 27 Velasco next argues that, even if he failed to comply with section 15-1505.6, the statute did not function to retroactively waive his objections to service. While Velasco is partly correct (see *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 43 ("a party who submits to the court's jurisdiction does so only prospectively and the appearance does not retroactively validate orders entered prior to that date")) (Internal quotation marks omitted), his argument is unavailing. The default judgment entered against Velasco would be void if service was ineffective. But Velasco still failed to comply with the 60 day time limit set forth in section 15-1505.6. He never properly contested the issue of the circuit court's jurisdiction over him. Accordingly, the fact that jurisdiction gained under section 15-1505.6 operates prospectively is irrelevant.

¶ 28 Velasco also argues that the parties revested the circuit court with jurisdiction. This argument is nonsensical. Where the trial court has lost jurisdiction, the parties may revest the court with jurisdiction through "participation in proceedings which are inconsistent with the circuit court's prior order." *Bell v. Hill*, 271 Ill. App. 3d 224, 229 (1995). But nothing indicates the circuit court ever lost jurisdiction; therefore, revestment is not at issue.

¶ 29 Service of Process

¶ 30 Having affirmed the striking of Velasco's motions to quash service of process, we decline to reach the merits of PNC Bank's substitute service.

¶ 31 Affirmed.