

No. 1-14-0793

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

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|--|---|-----------------------------|
| U.S. BANK NATIONAL ASSOCIATION as Trustee |) | Appeal from the |
| for RFMSI 2007S9, |) | Circuit Court of |
| |) | Cook County |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 09 CH 33003 |
| |) | |
| NANCY M. WILLIAMS a/k/a Nancy Williams, |) | |
| |) | |
| Defendant-Appellant, |) | |
| |) | |
| and |) | |
| |) | |
| ERIC B. WILLIAMS; THE CITY OF CHICAGO; |) | |
| THE HERITAGE PLACE; HOMEOWNERS' |) | |
| ASSOCIATION, f/k/a Washington Terrace |) | |
| Townhouse Homeowners' Association; UNKNOWN |) | Honorable |
| OWNERS; and NONRECORD CLAIMANTS, |) | Anthony C. Kyrakopolous and |
| |) | Jesse Reyes, |
| Defendants. |) | Judges, Presiding. |

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit did not err in: entering a judgment of foreclosure and sale; entering an order confirming sale; denying a motion to set aside the order approving the

report of sale; and denying a motion to reconsider its order denying the motion to set aside the order approving the report of sale.

¶ 2 The defendant, Nancy M. Williams, a/k/a Nancy Williams (hereinafter referred to as Williams), appeals from the circuit court's orders in this foreclosure action which confirmed a judicial sale of the property that is the subject of this action and the denial of her subsequent motions to set aside that order. For the reasons which follow, we affirm.

¶ 3 The plaintiff, U.S. Bank National Association as trustee for RFMSI 2007S9 (U.S. Bank), filed the instant action in the circuit court of Cook County to foreclose a mortgage on property commonly known as Unit 185, 1133 E. 83rd Street, Chicago, Illinois (the property), alleging payment default. Named as defendants were Williams; Eric B. Williams; The City of Chicago; The Heritage Place Homeowners' Association, f/k/a Washington Terrace Townhouse Homeowners' Association; Unknown Owners; and Nonrecord Claimants. Williams was personally served with a copy of the complaint and summons and, thereafter, filed a *pro se* appearance and answer, listing the property as her address. In her answer, Williams did not respond to any of the factual allegations in U.S. Bank's complaint. Rather, in a paragraph marked "Other affirmative matter," she wrote:

"I am separated from my husband and under employed. I am currently working with NHS (Neighborhood Housing Services) to find a way to keep my house and avoid foreclosure."

Subsequently, a motion was filed seeking the entry of an order granting Roderick F. Wimberly & Associates, leave to file an appearance on behalf of Williams; and, although there is no order in the record granting that motion, there is an appearance in the record filed on June 17, 2011, by Roderick F. Wimberly (Mr. Wimberly), listing his address as 439 E. 31st Street, Suite 208, Chicago, IL 60616.

¶ 4 On November 16, 2011, U.S. Bank sent notice to all of the defendants, including Williams, that it would appear on November 30, 2009, and move the court for: an order of default against the defendants that had failed to appear or plead to its complaint; summary judgment against Williams; and a judgment of foreclosure and sale. The certificate of service attached to the notice states that a copy of the notice along with the motions was mailed to Williams at the property, the address that she listed on her *pro se* appearance and answer, and that copies of the notice and motions were sent to Mr. Wimberly at 439 E. 31st Street, Chicago, IL 60616.

¶ 5 On November 30, 2011, the circuit court entered: an order of default against all of the defendants with the exception of Williams; summary judgment against Williams; and a judgment of foreclosure and sale.

¶ 6 On March 1, 2012, one day before the property was to be sold, Mr. Wimberly filed an emergency motion on behalf of Williams titled, "Defendant's Emergency Motion to Set Aside Order for Summary Judgment, To Transfer the Case to the Mediation Calendar, and Stay Judicial Sale." The motion alleged that an order of default had been entered against Williams in spite of the fact that she had filed a *pro se* appearance and answer to the complaint. Our review of the record, however, failed to disclose any order of default entered against Williams. The motion also alleged that U.S. Bank did not provide Williams with "proper" notice of its motion for summary judgment and, as a consequence, she failed to appear on November 30, 2011, when the motion was presented and summary judgment entered against her. The motion requested that the scheduled judicial sale be stayed and the case transferred to the circuit court's foreclosure mediation program. On March 2, 2012, the circuit court entered an order denying Williams' motion to vacate the summary judgment entered against her, "without prejudice." The circuit

court also stayed the judicial sale of the property until April 13, 2012, and provided further that the judicial sale could take place any time after April 16, 2012, with proper notice.

¶ 7 On April 17, 2012, the property was sold at auction. U.S. Bank was the successful bidder. Thereafter, U.S. Bank sent a notice of motion to each of the defendants, including Williams, and also to Mr. Wimberly that it would appear on July 2, 2012, and move the court for: an order approving the report of sale; the entry of a deficiency judgment against Williams and Eric B. Williams in the sum of \$205,959.68; and an order granting it possession of the property. The certificate of service states that the notice and all of the motions were mailed on May 17, 2012, postage prepaid, to each of the defendants, including Williams, and to Mr. Wimberly at 439 E. 31st Street, Chicago, IL 60616.

¶ 8 On July 2, 2012, pursuant to U.S. Bank's motions, the circuit court entered an order which: approved, ratified and confirmed the report of sale and distribution; entered judgment against Williams and Eric B. Williams in the sum of \$205,959.68; and granted U.S. Bank possession of the property 30 days after the entry of the order. In her brief before this court, Williams acknowledges that her attorney, Mr. Wimberly, appeared in court on July 2, 2012, but left the courtroom before the case was called to attend to another matter. The brief goes on to allege a conversation between Mr. Wimberly and U.S. Bank's attorney concerning Mr. Wimberly's conflict and recounts Mr. Wimberly's unsuccessful attempt to have the case recalled upon his return after the order confirming sale had been entered. However, none of these allegations find support by the record.

¶ 9 On July 23, 2012, Williams filed a motion titled "Defendant's Motion to Set Aside Order Confirming Judicial Sale." The motion again alleged that Williams was improperly defaulted and that she did not receive "proper notice" of U.S. Bank's motion for summary judgment. The

motion also alleged that neither Williams nor her attorney received "proper notice" of the sale of the property; that the notice of motion for the entry of an order approving sale, which was mailed, did not contain Mr. Wimberly's correct suite number; and that he did not receive a copy of that notice. The motion did, however, acknowledge that Mr. Wimberly knew of the court date and in fact appeared, but left the courtroom to attend another matter before the case was called. The motion goes on to recount Mr. Wimberly's conflict on that date, his conversation with U.S. Bank's attorney, and the denial of his request to recall the matter following his return to the courtroom after the order approving the sale had been entered. The motion also asserts that, "on information and belief" there was not proper notice of the foreclosure proceedings and the circuit court failed to hold a hearing prior to entering its order confirming the sale. The record reflects that the motion was not noticed for hearing at that time.

¶ 10 Williams filed an emergency motion to stay the order granting possession of the property to U.S. Bank. On July 27, 2012, the circuit court granted the motion and stayed enforcement of the order of possession until October 9, 2012. Williams again filed an emergency motion to stay the order granting possession which the circuit court granted on October 12, 2012, staying enforcement of the order of possession until January 11, 2013.

¶ 11 On October 10, 2012, Williams, for the first time, noticed her motion to set aside the order confirming sale for hearing on January 11, 2013. On January 11, 2013, Williams' motion was continued to March 8, 2013, and the stay of the order of possession was extended to that same date. When the matter came on for hearing on March 8, 2013, the circuit court entered a briefing schedule on the motion to vacate the order confirming sale and continued the matter for hearing on June 14, 2013.

¶ 12 On June 14, 2013, the judge assigned to the case recused himself and the case was transferred to a new judge. However, no new date was set for a hearing on Williams' motion to set aside the order confirming sale. As a consequence, U.S. Bank noticed Williams' motion for hearing on September 25, 2013. On September 25, 2013, the circuit court denied Williams' motion to set aside the order confirming the sale of the property.

¶ 13 On October 28, 2013, Mr. Wimberly, on behalf of Williams, sent notice of an emergency motion to "Reconsider or Set Aside" the order of September 25, 2013, setting the matter for hearing on January 27, 2014. That motion is a restatement of the allegations contained in Williams' motion to set aside the order confirming sale, supplemented by allegations that the notice of motion for the hearing on September 25, 2013, contained an incorrect zip code for Mr. Wimberly. The record, however, reflects that the zip code in the address to which the notice to Mr. Wimberly was sent is the same zip code that Mr. Wimberly listed in the address on his appearance. The motion, although signed by Mr. Wimberly, asserts that "on information and belief" he never received the notice and, as a consequence, did not appear at the hearing on September 25, 2013. On January 27, 2014, the circuit court denied Williams' motion, and this appeal followed.

¶ 14 Williams makes a number of arguments on appeal, none of which have merit. First, she argues that the circuit court erred in denying her an opportunity to respond to U.S. Bank's motion to confirm the sale of the property. There is no evidence contained in this record that Williams was denied the right to respond to that, or any other, motion. What the record does reflect is that neither Williams nor her attorney appeared before the court on the dates when critical motions were heard after having been sent notice. They failed to appear on the date on which summary judgment was entered against Williams and the judgment of foreclosure and sale was entered.

They failed to appear for the hearing on the motion to confirm the report of sale. And they failed to appear on the date that Williams' motion to set aside the order confirming sale was heard and denied. Williams asserts on appeal, as she did in her motions before the circuit court, that neither she nor her attorney received "proper" notice of U.S. Bank's motion for summary judgment, the motion to confirm the sale, or the motion for a hearing on her motion to set aside the order confirming the sale. Her assertions in this regard are belied by the record. The certificates of service attached to the notices of each of these critical motions reflect that the notices and motions were mailed to all of the defendants and Mr. Wimberly, postage prepaid. The notices were sent to Williams at the property, the address which she gave on her *pro se* appearance and answer. The notices were also sent to Mr. Wimberly at 439 E. 31st Street, Chicago, IL 60616, the address he listed on his appearance and each of the pleadings which he filed in this case. The only thing missing from Mr. Wimberly's address as listed on the notices was his suite number. Williams appears to argue that the failure to include the suite number in the notices addressed to Mr. Wimberly somehow rendered the notices defective. However, she has failed to cite any case which held that failure to include a suite number in an otherwise correct address renders the notice defective, and our research has failed to disclose any case so holding. As for her argument that neither she nor Mr. Wimberly received any of the notices or motions, Illinois Supreme Court Rule 12(c) (eff. Sept. 19, 2014) provides that service by mail is "complete four days after mailing."

¶ 15 Further, Williams never filed any pleading in response to U.S. Bank's motion to confirm the sale of the property despite the fact that the notice and a copy of that motion were mailed 1½ months prior to the scheduled court date of July 2, 2012. Nevertheless, on March 8, 2013, the circuit court entered a briefing schedule on Williams' motion to set aside the order confirming

the sale, affording Williams an opportunity to file a brief supporting her motion. However, the record fails to reflect that she filed any such brief.

¶ 16 Next, Williams argues that U.S. Bank failed to provide "proper" notice of the sale of the property. Her brief is somewhat vague as to the defect in the notice of sale addressed to her; and as for the notice addressed to Mr. Wimberly, she again argues that the notice was defective for want of including his suite number in the address to which it was addressed. Having already rejected the argument that the notice to Mr. Wimberly was defective because his suite number was not included in an otherwise properly addressed notice, we will not revisit the argument. We will, however, address the issue of whether Williams complied with the statutory provision relating to motions to set aside a sale based upon lack of notice.

¶ 17 Section 15-1508(c) of the Code of Civil Procedure (Code) provides, in relevant part, that any party entitled to notice of a judicial sale who does not receive notice of the sale in compliance with section 15-1507(c) of the Code (735 ILCS 5/15-1507(c) (West 2010)) may file a "motion supported by affidavit made prior to confirmation of such sale ask[ing] the court which entered the judgment to set aside the sale." 735 ILCS 5/15-1508(c) (West 2010). In this case, Williams never filed a motion to set aside the sale prior to confirmation despite the fact that she was given notice 1¹/₂ months prior to the scheduled court date set for confirmation and no affidavit of lack of notice to her or Mr. Wimberly was ever filed in this case.

¶ 18 Williams also argues that the circuit court failed to conduct a proper hearing on U.S. Bank's motion to confirm the sale. She asserts that the circuit court deprived her attorney "from submitting objections and argument regarding the confirmation of the judicial sale." However, the record before us does not contain a transcript of the proceedings held on July 2, 2012, the date upon which the circuit court entered its order confirming the sale. In the absence of a

transcript or an acceptable substitute as provided in Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005), we have no basis to determine the extent of the hearing that was held. It was Williams' obligation as the appellant to furnish us with a record sufficient to address her assignments of error. Any doubts which may arise from an incomplete record are resolved against her, and we assume that the circuit court acted in accordance with applicable statutes. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). As for the assertions in her brief before this court and in her motions in the circuit court that conversations were held between Mr. Wimberly and U.S. Bank's attorney on July 2, 2012, prior to his leaving the courtroom to attend another matter and his subsequent attempts to have the case recalled following his return after the order confirming the sale had been entered, suffice it to say that the facts alleged find no support in the record before us. They are nothing more than allegations contained in unverified motions filed by Mr. Wimberly seeking an order to set aside the order confirming the sale of the property.

¶ 19 Finally, Williams argues that some procedural impropriety occurred when U.S. Bank noticed her motion to set aside the order confirming sale for hearing on September 25, 2013, "without contacting the Defendant and without sending the Defendant proper notice." We have already rejected her argument that neither she nor her attorney received proper notice of the September 25, 2013, hearing; and, as Williams acknowledges in her brief, Illinois Supreme Court Rule 184 (eff. July 1, 1982), provides that "[e]ither party may call up the motion for disposition."

¶ 20 Never once in any of her pleadings filed in the circuit court did Williams ever attack the validity of U.S. Bank's note and mortgage. She never filed any pleading in which she denied any of the factual allegations in U.S. Bank's complaint for foreclosure. Her sole objections before the circuit court and before this court are addressed to the notice that she and her attorney were given

at every stage of the proceedings; objections belied by the record. Based upon the record in this case, we find no error in the summary judgment entered against Williams or the judgment of foreclosure and sale. Nor do we find any error in the circuit courts order confirming the sale of the property. The decision to confirm a judicial sale is committed to the discretion of the circuit court (*Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008)), and based on the foregoing analysis, we find no abuse of that discretion in this case. Finally, the decision to grant or deny a motion to vacate or reconsider is also committed to the discretion of the circuit court. *Larson v. Pedersen*, 349 Ill. App. 3d 203, 207 (2004). We find no abuse of discretion in the circuit court's denial of either Williams' motion to set aside the order confirming sale or her motion to reconsider that order. Therefore, we affirm: the judgment of foreclosure and sale, the order confirming the sale, the order denying Williams' motion to set aside the order confirming the sale; and the order denying Williams' motion to reconsider that order.

¶ 21 Affirmed.