

No. 1-14-0812

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RESIDENTIAL CREDIT SOLUTIONS, INC.,)	
)	
Plaintiff/Appellee,)	Appeal from the
)	Circuit Court of
v.)	Cook County.
)	
CRYSTAL BRUCE,)	No. 13 CH 4883
)	
Defendant/Appellant,)	Honorable
)	Pamela McLean Meyerson,
(Mortgage Electronic Registration Systems, Inc.,)	Judge Presiding.
Defendant.))	

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* This court has jurisdiction to entertain defendant's appeal. Trial court's denial of defendant's petition for relief from judgment affirmed where it was barred by limitations period of section 15-1505.6(a) of Illinois Mortgage Foreclosure Law.

¶ 2 Defendant Crystal Bruce appeals from the trial court's denial of her petition for relief from a judgment of foreclosure, which defendant filed pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401(a) (West 2014)). She claims that the trial court erred in denying this motion because she was never properly served with the foreclosure suit brought by plaintiff Residential Credit Solutions, Inc. Plaintiff contends that we lack jurisdiction to consider defendant's appeal because of deficiencies in defendant's notice of appeal, deficiencies in her

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section 2-1401 petition, and her failure to properly serve plaintiff with her petition. Plaintiff also asks us to dismiss defendant's appeal because the record on appeal is insufficient. Finally, plaintiff contends that the section 2-1401 petition was properly denied because it was time-barred.

¶ 3 We reject plaintiff's claims that we lack jurisdiction to hear this appeal. The deficiencies in defendant's notice of appeal do not deprive us of jurisdiction. Moreover, the trial court properly treated defendant's petition, which was filed more than 30 days after the entry of final judgment, as a section 2-1401 petition. Finally, the fact that the trial court lacked personal jurisdiction over plaintiff due to defendant's deficient service of process does not deprive us of jurisdiction to review the trial court's judgment.

¶ 4 Similarly, we decline to dismiss defendant's appeal because the record is incomplete. Although the record lacks any transcripts of the proceedings below, they are unnecessary to resolve the issues raised in this appeal.

¶ 5 However, we affirm the trial court's judgment because defendant did not timely file her section 2-1401 petition. Defendant first filed a motion to vacate the judgment of foreclosure and sale in October 2013. She did not file her section 2-1401 petition, which challenged the trial court's personal jurisdiction over her, until February 2014. Thus, plaintiff did not comply with the 60-day limit to personal-jurisdiction challenges in the Illinois Mortgage Foreclosure Law. 735 ILCS 5/15-1505.6(a) (West 2012). Because defendant's petition was untimely, the trial court did not err in denying it.

¶ 6

I. BACKGROUND

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¶ 7 On March 25, 2004, defendant entered into a home mortgage loan with First Franklin Financial Corporation. The loan was secured by a mortgage on the home, with First Franklin Financial Corporation as mortgagee.

¶ 8 On February 19, 2013, plaintiff filed a foreclosure complaint, alleging that defendant had not made her scheduled payments since November 1, 2012. After defendant did not answer the complaint or appear, plaintiff moved for a default judgment of foreclosure and sale. Plaintiff attached an affidavit from a special process server to this motion. The affidavit said that, at 9:10 a.m. on February 21, 2013, the process server left a copy of the complaint and summons at 650 Hirsch Avenue with a woman named Kimberly Starks. The affidavit stated that Starks was defendant's sister, and that Starks resided at 650 Hirsch Avenue, Calumet City, Illinois. The affidavit described Starks as female, African-American, 37 years old, 5'7" tall, and 130 pounds.

¶ 9 On June 4, 2013, the trial court found defendant to be in default. On the same day, the trial court entered an order of foreclosure and sale of the property. On October 3, 2013, plaintiff filed a report of sale and distribution, stating that plaintiff purchased the property at auction on September 23, 2013.

¶ 10 On October 22, 2013, defendant filed a motion to vacate the default judgment and sale of her home. Defendant argued that plaintiff lacked standing to pursue the foreclosure because plaintiff was not the mortgagee—plaintiff presented no evidence that First Franklin Financial Corporation had assigned the mortgage to it. Defendant also argued that plaintiff's suit should be dismissed because its complaint was not verified. Defendant did not object to service of process or in any way attack the court's personal jurisdiction over her.

¶ 11 On December 19, 2013, the trial court denied defendant's motion to vacate and entered an order confirming the sale of the property.

¶ 12 On February 18, 2014, defendant filed the section 2-1401 petition at issue in this appeal. In her petition, defendant argued that plaintiff had not properly served her with notice of the suit and, as a result, the trial court lacked personal jurisdiction over her. Defendant attached an affidavit from Kimberly Starks, the individual whom the special process server claimed to have served with a copy of the complaint, in which Starks attested that she had never been served with any documents relating to this case. She said that, contrary to the special process server's affidavit, she was not at 650 Hirsch Avenue at 9:10 a.m. on February 21, 2013, and that she did not reside at that address at that time. Defendant also completed an affidavit that she included with her section 2-1401 petition. She asserted that she was not served with any documents until October 22, 2013. She also attested that Starks did not live at her home at the time when Starks was allegedly served. She said that she did not know of the alleged service upon Starks until February 5, 2014, when she first saw the special process server's affidavit.

¶ 13 On February 21, 2014, the trial court denied defendant's section 2-1401 petition. Defendant filed a notice of appeal on March 21, 2014. Plaintiff filed a motion to dismiss defendant's appeal, arguing that this court lacks jurisdiction. Defendant filed a response. We took plaintiff's motion to dismiss for consideration with the case.

¶ 14

II. ANALYSIS

¶ 15

A. Jurisdiction

¶ 16 Plaintiff raises three claims regarding this court's jurisdiction. First, plaintiff claims that defendant's notice of appeal was defective because it listed a non-existent order as the judgment being appealed from and because it was not signed by defendant. Second, plaintiff argues that we lack jurisdiction because defendant filed her petition more than 30 days after final judgment was entered, and thus the petition failed to meet the requirements of section 2-1401. Finally, plaintiff

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contends that we lack jurisdiction because defendant did not properly serve it with notice of her petition under Illinois Supreme Court Rule 105 (eff. Jan. 1, 1989). We address each of plaintiff's contentions in turn.

¶ 17 Illinois Supreme Court Rule 303(b) (eff. June 4, 2008) requires that a notice of appeal "specify the judgment or part thereof or other orders appealed from," and contain "the signature *** of each appellant or appellant's attorney." Plaintiff contends that defendant's notice of appeal was defective because it stated that defendant sought review of a March 19, 2014 order, of which the record contains no evidence. Plaintiff also argues that the signature on the notice of appeal does not appear to be defendant's.

¶ 18 A notice of appeal serves two functions. *Waste Management, Inc. v. International Surplus Lines Insurance Co.*, 144 Ill. 2d 178, 188 (1991). First, it vests this court with jurisdiction. *Id.* Second, it informs the prevailing party that the losing party is seeking review by a higher court. *Id.* We liberally construe the contents of a notice of appeal and will not consider "[m]ere technical defects in form" as fatal. *Id.* So long as the notice "fairly and accurately advises the successful party of the nature of the appeal," and the appellee is not prejudiced by defects in the notice, we will not be deprived of jurisdiction. *Harry W. Kuhn, Inc. v. County of Du Page*, 203 Ill. App. 3d 677, 684 (1990).

¶ 19 Plaintiff is correct that the "March 19, 2014" judgment date listed on defendant's notice of appeal does not appear in the record. However, plaintiff ignores the portion of defendant's notice of appeal that indicates that she sought "review of the lower court's denial of Defendant's petition filed pursuant to 735 ILCS 5/2-1401." Thus, defendant's notice of appeal plainly apprised plaintiff of the judgment from which defendant sought relief. The incorrect judgment date does not deprive this court of jurisdiction.

¶ 20 Likewise, the difference between the signature on the notice of appeal and plaintiff's signature does not render the notice of appeal fatally defective. Plaintiff cites no authority for the proposition that discrepancies in a signature render a notice of appeal invalid. To the contrary, our case law shows that an absence of a signature on a notice of appeal should be construed as a technical, not fatal, defect. Illinois Supreme Court Rule 137(a) (eff. July 1, 2013) provides that a party must sign any documents filed in a case. A violation of this rule does not render a pleading a nullity, however, as it may be cured. See, *e.g., id.* (allowing party to sign pleading after the absence of a signature is brought to party's attention); *Brown & Kerr, Inc. v. American Stores Properties, Inc.*, 306 Ill. App. 3d 1023, 1029 (1999) (finding that unsigned motion to reconsider a trial court judgment was not rendered null by the absence of a signature); see also *Becker v. Montgomery*, 532 U.S. 757, 765 (2001) (failure to sign notice of appeal was not a fatal defect). Thus, even assuming that defendant did not sign her notice of appeal in this case, that failure would not deprive us of jurisdiction, as the notice of appeal would not be rendered null.

¶ 21 Moreover, plaintiff has failed to show how it has been prejudiced by the discrepancy in defendant's signature. See *In re Estate of Weeks*, 409 Ill. App. 3d 1101, 1108-09 (2011) (listing incorrect party in notice of appeal did not render it fatally defective where the opposing party did "not allege she was prejudiced in any way by" the error); *Harry W. Kuhn, Inc.*, 203 Ill. App. 3d at 684-85 (appellate court had jurisdiction over all defendants even though they were not all listed in the notice of appeal because "[t]he record leaves little doubt of who the parties are, both here and below," and plaintiff could not show prejudice). There is no question that plaintiff was aware of which party was appealing the trial court's judgment. There is no reason to suspect that someone other than defendant is pursuing this appeal on her behalf, as she signed her brief and

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response to plaintiff's motion to dismiss. Liberally construing defendant's notice of appeal, we find that it was sufficient to vest this court with jurisdiction.

¶ 22 We now turn to plaintiff's contention that we lack jurisdiction because defendant did not file her petition within 30 days and her petition did not meet the requirements of section 2-1401. Thirty days after a trial court enters final judgment in a case, it loses its jurisdiction to vacate or modify that order. *Lajato v. AT & T, Inc.*, 283 Ill. App. 3d 126, 131 (1996). After that period, the losing party may only attack the judgment in the trial court by filing a petition pursuant to section 2-1401. 735 ILCS 5/2-1401(a) (West 2014); *In re Haley D.*, 2011 IL 110886, ¶ 58. The parties do not dispute that defendant's petition was filed more than 30 days after the trial court entered final judgment—the December 19, 2013 order approving the sale of the property—and that defendant could only seek to vacate that order pursuant to section 2-1401. However, plaintiff contends, defendant failed to comply with the requirements of section 2-1401, and that the trial court did not treat it as a section 2-1401 petition. Plaintiff argues that the trial court thus lacked jurisdiction to rule on defendant's petition and, as a result, we lack jurisdiction to entertain this appeal.

¶ 23 Plaintiff cites *Keener v. City of Herrin*, 235 Ill. 2d 338 (2009), in support of its claim. In *Keener*, the Illinois Supreme Court held that the trial court did not have jurisdiction to rule on a motion filed more than 30 days after it had entered its final judgment where the record contained "no support" for the notion that the trial court had considered the plaintiff's motion as a section 2-1401 petition. *Id.* at 348. Specifically, "the circuit court never mentioned a section 2-1401 petition and did not indicate that it was proceeding under section 2-1401." *Id.* at 349. By contrast, in this case, the trial court indicated that it considered defendant's petition as a section 2-1401 petition. In its order denying defendant's petition, it wrote, "Defendant's Petition to

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Vacate Default Judgment and Set Aside Order of Eviction *pursuant to 735 ILCS 5/2-1401* is denied." (Emphasis added.) Plaintiff does not dispute that the trial court possessed authority to treat defendant's petition as a section 2-1401 petition, nor does it claim that the trial court erred in doing so. See *Hanson v. De Kalb County State's Attorney's Office*, 391 Ill. App. 3d 902, 906 (2009) (and cases cited therein) ("[B]ecause section 2-1401 is the only vehicle by which a civil litigant can attack a final judgment more than 30 days after its entry, trial and appellate courts *must* treat a filing that is too late to be a postjudgment motion as a section 2-1401 petition." (Emphasis added.)). Moreover, defendant clearly invoked section 2-1401 in her petition. She expressly cited the statute and argued that she met the necessary elements of section 2-1401 by alleging that she had a meritorious claim and had acted with diligence. We reject plaintiff's claim that the trial court treated defendant's petition as something other than a section 2-1401 petition.

¶ 24 Finally, plaintiff claims that we lack jurisdiction because defendant did not properly serve plaintiff with a copy of her section 2-1401 petition. Plaintiff claims that, because defendant failed to comply with the rules regarding service of a section 2-1401 petition, the trial court "did not acquire jurisdiction to consider it." According to plaintiff, the trial court's lack of jurisdiction deprives this court of jurisdiction to entertain defendant's appeal.

¶ 25 Even assuming that defendant failed to serve plaintiff with a copy of the petition, that failure would not deprive us of jurisdiction to review the trial court's order denying the petition. A notice of appeal from a final judgment confers jurisdiction upon this court to review the orders of a trial court; " '[n]o other step is jurisdictional.' " *Huber v. American Accounting Ass'n*, 2014 IL 117293, ¶ 8; (quoting Ill. S. Ct. R. 301 (eff. Feb. 1, 1994)). Thus, our jurisdiction to review the trial court's judgment is not dependent upon the trial court's personal jurisdiction over plaintiff.

¶ 26 If plaintiff's assertion were true, and we lacked jurisdiction to entertain any appeal where the trial court lacked personal jurisdiction over a party, we would be without authority to review any trial court order entered without personal jurisdiction. Such a holding would be nonsensical. See, e.g., *JPMorgan Chase Bank, National Ass'n v. Ivanov*, 2014 IL App (1st) 133553, ¶¶ 44-56 (reversing trial court's judgment because the plaintiff failed to properly serve the defendant and the trial court thus lacked personal jurisdiction); *Graver v. Pinecrest Volunteer Fire Department*, 2014 IL App (1st) 123006, ¶¶ 22-23 (reversing trial court's judgment because it lacked personal jurisdiction). Indeed, the Illinois Supreme Court has held that this court has a *duty* to vacate void trial court orders, including those entered without personal jurisdiction over a party. See *In re M.W.*, 232 Ill. 2d 408, 414 (2009) ("If a court lacks *** personal jurisdiction over the parties, any order entered in the matter is void[.]"); *Delgado v. Board of Election Commissioners of City of Chicago*, 224 Ill. 2d 481, 486 (2007) ("Illinois law provides that courts have an independent duty to vacate void orders and may *sua sponte* declare an order void.").

¶ 27 Plaintiff cites *In re Estate of Randell*, 12 Ill. App. 3d 640, 641 (1973), for the proposition that, "[w]here the trial court has no jurisdiction an appeal can confer no jurisdiction on the reviewing court." While plaintiff's quotation is accurate, *Randell* does not persuade us that we must dismiss defendant's appeal because we lack jurisdiction to consider it. In *Randell*, a child's mother sought to obtain custody of the child by seeking to modify a divorce decree in Illinois. *Id.* at 640-41. The trial court denied the mother's motion. *Id.* at 641. The appellate court affirmed the trial court's order, holding that, because the minor resided in Missouri, the trial court "was without jurisdiction to entertain the petition or to appoint a guardian" under the Probate Act. *Id.* at 641-42. Therefore, while the appellate court in *Randell* held that the trial court lacked jurisdiction to hear the mother's motion, it did not find that it lacked appellate jurisdiction to

consider the trial court's jurisdiction; to the contrary, it *affirmed* the trial court's order denying her motion. Had the appellate court lacked jurisdiction to entertain the mother's appeal, the appropriate disposition would have been to dismiss her appeal, not affirm the trial court's order. See *Huber*, 2014 IL 117293, ¶ 8 (where appellate court lacks jurisdiction, it "must dismiss the appeal"). *Randell* does not support plaintiff's claim that we must dismiss this appeal because it was not properly served with defendant's petition in the trial court.

¶ 28 We recognize that, in *People v. Mescall*, 347 Ill. App. 3d 995, 997 (2004), the court found that, "because the trial court lacked personal jurisdiction over the State," it could not "enter judgment against the State." But *Mescall* does not support plaintiff's contention that we must dismiss defendant's appeal. In *Mescall*, the State, like plaintiff in this case, alleged that the appellate court had "no jurisdiction to hear the appeal" because the petitioner had failed to properly serve it with his section 2-1401 petition. *Id.* While the court agreed that it could not enter judgment against the State because of the trial court's lack of personal jurisdiction over the State, the court flatly rejected the State's argument that the appellate court lacked "jurisdiction to review the dismissal of [the petitioner]'s petition." *Id.* at 999. The court thus reached the merits of the petitioner's appeal. *Id.* at 1000-01.

¶ 29 Like the State in *Mescall*, plaintiff here claims that we cannot consider defendant's appeal because defendant did not serve it with her section 2-1401 petition. Like the court in *Mescall*, we conclude that defendant's allegedly deficient service does not preclude us from reviewing the trial court's order. To hold otherwise would be to create an absurd result—one where we could not review any trial court order unless all parties had been properly served—that would conflict with the Illinois Supreme Court rules governing our jurisdiction. If an appellate court lacks

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jurisdiction to review a trial court order because the trial court lacked jurisdiction, the original jurisdictional problem in the trial court could never be cured or even addressed by a higher court.

¶ 30 The trial court's order denying defendant's section 2-1401 petition was a final, appealable order. Ill. S. Ct. R. 304(b)(3) (eff. Feb. 26, 2010). Defendant filed a notice of appeal, notifying plaintiff that she was seeking relief from that order, within 30 days of the order. Therefore, this court has jurisdiction over this appeal. Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008); *Huber*, 2014 IL 117293, ¶ 8. We deny plaintiff's motion to dismiss defendant's appeal.

¶ 31 B. Sufficiency Of The Record

¶ 32 Along with its challenge to this court's jurisdiction, plaintiff also contends that we should dismiss defendant's appeal because defendant has failed to furnish a complete record on appeal. Specifically, plaintiff asserts that defendant failed to provide a transcript of the hearing on defendant's section 2-1401 petition and that, consequently, we must presume that the trial court's ruling on the petition was correct.

¶ 33 Illinois Supreme Court Rule 323 requires an appellant to prepare and file a transcript or bystander's report of the proceedings in the trial court. Ill. S. Ct. R. 323(a), (c) (eff. Dec. 13, 2005). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Thus, where an appellant fails to furnish a complete record of proceedings on appeal, "it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Id.* However, where gaps in the record do not impede a court from resolving the issues presented, we will not dismiss the appellant's appeal. See, e.g., *Midstate Siding and Window Co., Inc. v. Rogers*, 204 Ill. 2d 314, 319 (2003) (considering merits of appeal where court was called upon to interpret statute, not evaluate sufficiency of evidence); *Walker v. Iowa Marine Repair Corp.*, 132

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Ill. App. 3d 621, 625 (1985) (considering merits of appeal where trial court heard no evidence before making its ruling and court's ruling "could only have been based" on pleadings and affidavits presented to it).

¶ 34 In this case, the absence of a transcript of the hearing on defendant's petition does not preclude us from reviewing the propriety of the trial court's order. The trial court dismissed the petition without an evidentiary hearing and before plaintiff had even filed its answer to defendant's petition. Where a party does not answer a section 2-1401 petition, all well-pleaded facts in the petition are taken as true. *People v. Vincent*, 226 Ill. 2d 1, 9 (2007). Thus, the trial court's *sua sponte* dismissal of the petition constituted a determination that, even taking defendant's assertions as true, plaintiff was entitled to judgment on the pleadings and that defendant could not state a claim for relief. See, e.g., *id.* at 9-12 (where State did not answer defendant's section 2-1401 petition, supreme court considered trial court's denial of petition as judgment on pleadings or as dismissal of petition with prejudice). No evidence would have been introduced to assist the trial court in reaching that conclusion, and plaintiff does not claim that the trial court heard any.

¶ 35 In light of the trial court's *sua sponte* disposition of defendant's petition without a responsive pleading, our review is *de novo*. *Id.* at 18. Thus, it is unnecessary for us to defer to the reasoning of the trial court or to know the basis for its decision to deny defendant's petition. See *Goodman v. Ward*, 241 Ill. 2d 398, 406 (2011) (*de novo* review is "independent and not deferential" (internal quotation marks omitted)). We reject plaintiff's argument that we must dismiss defendant's appeal due to the insufficiency of the record.

¶ 36 C. Timeliness Of The Section 2-1401 Petition

¶ 37 We now turn to the merits of defendant's appeal. As we have already indicated, the trial court's written order did not elaborate on the basis for its ruling, stating only that defendant's section 2-1401 petition was "denied." Defendant claims that her section 2-1401 petition was sufficient to demonstrate that plaintiff did not serve defendant and, consequently, the trial court's order approving the sale was entered without personal jurisdiction over defendant. Plaintiff contends that the section 2-1401 petition was time-barred. Specifically, plaintiff argues that section 15-1505.6(a) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1505.6(a) (West 2012)) precluded defendant from raising her challenge to the trial court's personal jurisdiction more than 60 days after she filed her motion to vacate the judgment of foreclosure and sale. Defendant did not file a reply brief and, consequently, does not address plaintiff's argument. To resolve this issue, we must determine the applicability of section 15-1505.6 to this action, a question of law we review *de novo*. See *Goldfine v. Barack, Ferrazzano, Kirschbaum & Perlman*, 2014 IL 116362, ¶ 48 (interpretation and application of statute is question of law reviewed *de novo*).

¶ 38 Section 15-1505.6(a) of the Illinois Mortgage Foreclosure Law provides that, in a residential mortgage foreclosure proceeding, when a party moves to dismiss an action or to quash service of process based on an objection "to the court's jurisdiction over the person," it must do so within 60 days of the earlier of two dates: (i) the date that the moving party first files an appearance; or (ii) the date that the moving party first participates in a hearing without filing an appearance. 735 ILCS 5/15-1505.6(a) (West 2012). This 60-day deadline may be extended by the court for good cause. *Id.* In addition, under subsection (b), if a defendant files any substantive motion in the case that does *not* specifically object to personal jurisdiction, the defendant thereby waives its jurisdictional objection. 735 ILCS 5/15-1505.6(b) (West 2012).

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¶ 39 This statute, which became law on August 12, 2011, is similar in some respects to section 2-301 of the Code of Civil Procedure, the personal-jurisdiction statute that applies generally in civil proceedings in Illinois. See 735 ILCS 5/2-301 (West 2012). For example, as with subsection (b) of section 15-1505.6, section 2-301 provides that if a party files a responsive pleading or substantive motion that does not specifically object to personal jurisdiction, the party waives any objection to personal jurisdiction. *Cf.* 735 ILCS 5/2-301(a-5) (West 2012) *with* 735 ILCS 5/15-1505.6(b) (West 2012).

¶ 40 But in one significant way, the more specific law governing residential mortgage foreclosure cases differs from the general rule. Under section 2-301, the mere filing of an appearance does not waive an objection to personal jurisdiction. See 735 ILCS 5/2-301(a) (West 2012); *GreenPoint Mortgage Funding, Inc. v. Poniewozik*, 2014 IL App (1st) 132864, ¶ 13; *KSAC Corp. v. Recycle Free, Inc.*, 364 Ill. App. 3d 593, 595 (2006). For residential mortgage foreclosure cases governed by section 15-1505.6(a), however, a defendant's filing of an appearance, or even his or her participation in a hearing, starts a 60-day window (unless extended for good cause) within which the defendant must object to personal jurisdiction. 735 ILCS 5/15-1505.6(a) (West 2012). This court has previously noted that the reason for this stricter requirement in residential mortgage foreclosure cases was a concern over unreasonable delay in foreclosure cases and the desire to limit the ability to file motions to quash service. *GreenPoint Mortgage Funding, Inc.*, 2014 IL App (1st) 132864, ¶ 16.

¶ 41 There is no serious question that the personal-jurisdiction procedural rules set forth in section 15-1505.6 apply to this residential mortgage foreclosure action. It is of no import that defendant brought her claim of insufficient service of process under section 2-1401; that is simply the vehicle she used to raise her argument post-judgment. Section 15-1505.6 applies

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equally to a challenge to personal jurisdiction asserted post-judgment under section 2-1401 as it would to such a claim during the pendency of the case prior to final judgment. See *id.*, ¶ 24 (in residential mortgage foreclosure proceeding, defendant's section 2-1401 petition, alleging improper service of process and thus lack of personal jurisdiction, was properly dismissed pursuant to section 15-1505.6 because it was filed more than 60 days after defendant appeared). There is likewise no doubt that the claim raised by defendant in her section 2-1401 petition, objecting to service of process, is one related to personal jurisdiction. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103-04 (2002) (section 2-1401 petition challenging party's service of process is attack on trial court's personal jurisdiction); *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 16 (section 2-1401 petition challenging trial court's jurisdiction because of improper service is "[e]ssentially *** a motion to quash service").

¶ 42 In applying section 15-1505.6 to the facts of this case, we agree with plaintiff that defendant's section 2-1401 petition was time-barred. Defendant first appeared in the case by filing her motion to vacate the trial court's judgment of foreclosure and sale on October 22, 2013. On February 18, 2014—120 days after defendant appeared and filed her motion to vacate—defendant filed her section 2-1401 petition, which challenged the trial court's personal jurisdiction over her. Pursuant to section 15-1505.6(a), defendant failed to timely assert her challenge to the trial court's personal jurisdiction.

¶ 43 Because defendant failed to file her petition within 60 days of filing her first motion and appearance in the case, and because she did not seek an extension of this 60-day deadline from the trial court, section 15-1505.6 barred her from filing her challenge to the trial court's personal jurisdiction. We affirm the trial court's denial of the petition.¹

¹ We also note that, in this circumstance, defendant likely waived her challenge to the

¶ 44 Defendant also challenges the trial court's denial of her motion to reconsider the denial of her section 2-1401 petition. However, the record does not contain a copy of this motion or the trial court's ruling on it. Consequently, we must presume that the trial court's denial of this motion was in conformity with fact and law. *Foutch*, 99 Ill. 2d at 392. Moreover, having found that plaintiff's petition was time-barred as a matter of law, the trial court could not have erred in denying defendant reconsideration of its order denying defendant's petition.

¶ 45 **III. CONCLUSION**

¶ 46 For the reasons stated, we deny plaintiff's motion to dismiss this appeal for lack of jurisdiction. Any deficiencies in defendant's petition and her notice of appeal did not deprive this court of jurisdiction, and defendant's alleged failure to serve plaintiff with her petition does not preclude us from reviewing the trial court's judgment. However, we affirm the trial court's judgment because defendant's section 2-1401 petition was time barred by section 15-1505.6(a) of the Illinois Mortgage Foreclosure Law.

¶ 47 Motion to dismiss appeal denied; judgment affirmed.

trial court's personal jurisdiction with the filing in October 2013 of her motion to vacate, which asserted two bases for vacatur of the trial court's order—that plaintiff lacked standing to sue, and that the complaint was not verified—but did *not* assert an objection to personal jurisdiction. 735 ILCS 5/15-1505.6(b) (West 2012) (if party in residential mortgage foreclosure case files responsive pleading or motion other than objection based on personal jurisdiction, that party waives any such jurisdictional objection). However, plaintiff did not raise subsection (b) as a reason to affirm the trial court's dismissal, and thus we will not consider it.