

SECOND DIVISION
May 12, 2015

No. 1-14-1537

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

NATIONSTAR MORTGAGE, LLC,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CH 039260
)	
SAHIN CAKIR a/k/a SAHIN M. CAKIR,)	Honorable
)	Michael T. Mullen,
Defendant-Appellant.)	Judge Presiding.

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

O R D E R

- ¶ 1 *Held:* The circuit court did not abuse its discretion by confirming the judicial sale of defendant's foreclosed property.
- ¶ 2 In this mortgage foreclosure action, defendant Sahin Cakir appeals from the order of the circuit court granting plaintiff Nationstar Mortgage's motion to confirm the judicial sale of defendant's home. On appeal, defendant contends the trial court erred because at the time of the sale he had applied for relief under the Making Home Affordable Program of the United States

Treasury, also known as the Home Affordable Modification Program (HAMP) (see 735 ILCS 5/15-1508(d-5) (West 2012) (requiring courts to set aside sales when HAMP requirements have been met)). We affirm.

¶ 3 Defendant obtained a mortgage from Countrywide Home Loans on or about June 18, 2007, for the purchase of real estate located at 4846 North Oakley Avenue in Chicago. The mortgage was transferred to subsequent lenders and eventually serviced by plaintiff, Nationstar Mortgage. Foreclosure proceedings were instituted against defendant for mortgage default and a judgment of foreclosure was entered on July 7, 2010. The circuit court ultimately stayed the judicial sale of the property until August 23, 2013, and the property sold three days later upon the stay's expiration. A motion to confirm the judicial sale was subsequently filed and granted. Defendant appeals from the order confirming the sale.

¶ 4 Before we turn to the merits of this appeal, we must address plaintiff's motion to dismiss based on the serious deficiencies in defendant's brief. As plaintiff notes, it is entirely devoid of legal authority, contains no citations to the record, and fails to develop a robust legal argument to warrant relief on appeal – in clear violation of Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013).

¶ 5 Rule 341's mandates regarding format and content of appellate briefs are compulsory. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. Where a party's brief does not comply with these rules, this court has discretion to strike and dismiss the brief for failure to comply. *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 18. The fact that a party appears *pro se* does not relieve him from complying as nearly as possible with the rules of our court. *Voris*, 2011 IL App (1st) 103814, ¶ 8. Therefore, it is within our discretion to immediately dismiss defendant's appeal. However, because the record is slim and we have the benefit of a cogent brief

from plaintiff, we will not strike his brief and dismiss the appeal without discussing its merits.

Twardowski v. Holiday Hospitality Franchising, Inc., 321 Ill. App. 3d 509, 511 (2001).

¶ 6 To the extent that defendant argues the circuit court erred by confirming the judicial sale of his property because plaintiff failed to comply with HAMP guidelines, we disagree.

¶ 7 A reviewing court will review a circuit court's approval of a judicial sale for abuse of discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008). A circuit court abuses its discretion when its ruling turns on an error of law or where no reasonable person would take the view adopted by the circuit court. *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 58.

¶ 8 A judicial foreclosure sale is not complete until approved by the circuit court.

Commercial Credit Loans v. Espinoza, 293 Ill. App. 3d 915, 927 (1997). In order to set aside a judicial sale, section 15-1508(d-5) of the Illinois Code of Civil Procedure requires that a defendant file a motion before confirmation of the sale, and prove, by a preponderance of the evidence, that he applied for assistance under HAMP and that the real estate was sold in material violation of HAMP's requirements for proceeding to judicial sale. 735 ILCS 5/15-1508(d-5) (West 2012); *Bermudez*, 2014 IL App (1st) 122824, ¶ 59.

¶ 9 The threshold issue is whether defendant applied for assistance under HAMP. *Bermudez*, 2014 IL App (1st) 122824, ¶ 60. In order to establish a HAMP application was submitted, defendant must provide evidence that makes it more probably true than not that he submitted the documentation required by the servicer to determine the borrower's eligibility and verify his or her income. *Id.* ¶ 67.

¶ 10 Defendant clearly has not met this burden. The only documentation to support his application is an unsworn "affidavit" from Northwest Side Housing Center which indicates, in

part, a "packet was submitted to the lender on 06/25/2013 asking for a HAMP modification." Unfortunately, however, this document, without more, is insufficient to establish he applied for assistance by a preponderance of the evidence. See *Id.* ¶¶ 67-68 (identifying documents required to prove an application for HAMP assistance was submitted). Furthermore, because no record of proceedings was provided on appeal, we must presume the order entered by the circuit court was in accordance with the law and had a sufficient factual basis (*Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003)) and we cannot presume that the deficiencies in defendant's motion were resolved during a hearing before the trial court.

¶ 11 Therefore, we find the circuit court did not abuse its discretion by confirming the judicial sale of defendant's property because defendant did not demonstrate by a preponderance of the evidence that he applied for HAMP assistance.

¶ 12 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 13 Affirmed.