

No. 1-14-3589

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

CITIMORTGAGE, INC., as Assignee of Mortgage Electronic)	Appeal from the
Registration Systems, Inc., as Nominee for Countrywide)	Circuit Court of
Loans, Inc.,)	Cook County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09 CH 12502
)	
SILVIA HARRIS a/k/a SILVIA CERRILLO,)	
)	
Defendant-Appellant,)	
)	
(Rigoberto Cerrillo, U.S. Bank, N.A., as Trustee Under)	
Mortgage Number 0021117517, American General)	
Financial Services of Illinois, Inc., Under Memorandum)	
and Judgment Recorded as Document Number 0716609047,)	
Nonrecord Claimants, Unknown Tenants, and Unknown Owners,)	Honorable
)	Michael T. Mullen,
Defendants).)	Judge Presiding.

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

O R D E R

¶ 1 *Held:* We affirmed the circuit court's denial of defendant's section 2-1401 petition where her appellate briefs did not comply with Supreme Court Rule 341; the record on appeal was insufficient; any objection to the circuit court having personal jurisdiction over her had been waived; and, under the circumstances, relief

pursuant to section 2-1401 was not available to defendant in this mortgage foreclosure action.

¶ 2 Defendant-appellant, Silvia Harris, a/k/a Silvia Cerrillo, appeals from the denial of her *pro se* petition brought pursuant to section 2-1401(f) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)), which sought to vacate orders entered in this mortgage foreclosure action. On appeal, Ms. Cerrillo argues that we should reverse the denial of her petition because the circuit court, in the foreclosure action, lacked personal jurisdiction and, at the hearing on the petition, prevented her from fully presenting her arguments because she was proceeding without an attorney. However, Ms. Cerrillo failed to file briefs which meet the requirements of Illinois Supreme Court Rule 341(f)(6), (7) (Ill. S. Ct. R. 341(f)(6), (7) (eff. Feb. 6, 2013)), or provide a sufficient record. Additionally, her jurisdictional challenges were waived when Ms. Cerrillo appeared by counsel and participated in the foreclosure action without objection. We therefore affirm.

¶ 3 On March 19, 2009, plaintiff-appellee, CitiMortgage, Inc., as assignee of Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Loans, Inc. (CitiMortgage), filed a complaint to foreclose a mortgage against Ms. Cerrillo, and the other defendants: Rigoberto Cerrillo; U.S. Bank, N.A., as trustee under mortgage recorded as document number 0021117517 (U.S. Bank); American General Financial Services of Illinois, Inc., under memorandum and judgment recorded as document number 0716609047 (AGFS); and nonrecord claimants, unknown tenants, and unknown owners. The complaint alleged that on January 8, 2002, Mr. Cerrillo and Ms. Cerrillo (together referred to as the Cerrillos) executed a mortgage for the property located at 3629 South 57th Court, Cicero, Illinois (the residence) as well as a companion installment note. It was further alleged that the Cerrillos were in default as of

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November 1, 2008. CitiMortgage asserted that it was the holder of the note and mortgage, "either as originator of the loan or by assignment," and the note and mortgage were attached to the complaint.

¶ 4 CitiMortgage attempted to personally serve the Cerrillos at the residence on March 25, 26, 28, and 30 of 2009. However, according to the affidavits of the special process server, a male who lived at the residence at that time stated that the Cerrillos were his landlords and did not live there. The current resident also said that he mailed his rent to the Cerrillos, but he did "not have the address."

¶ 5 Thereafter, CitiMortgage served the Cerrillos by publication in April of 2009; the Cerrillos did not appear. On October 19, 2009, the circuit court entered an order of default and judgment of foreclosure against all defendants, and ordered the sale of the residence.

¶ 6 However, on February 19, 2010, the circuit court entered an order stating that Chicago Volunteer Legal Services (CVLS) had accepted appointment as Ms. Cerrillo's counsel and granting CVLS a 28-day extension to file an appearance and motion to quash service on her behalf. An attorney from CVLS filed an appearance for Ms. Cerrillo on March 19, 2010 and a motion to quash service on April 16, 2010. In her affidavit in support of the motion to quash service and in contradiction to the affidavits of the process server, Ms. Cerrillo stated that she had continuously lived at the residence with her children since January 2002, and the residence had not been leased to a tenant. On July 13, 2010, after briefing and a hearing, the circuit court granted Ms. Cerrillo's motion and vacated the orders entering default and a judgment of foreclosure, and directing a sale of the residence.

¶ 7 CitiMortgage then served Ms. Cerrillo by publication on July 30, 2010. CitiMortgage also served Ms. Cerrillo by substitute service on August 3, 2010. The affidavit of the process server, John Haniacek, stated that, on that date, he left a copy of the alias summons and the complaint at the residence with someone who lived there; Jonathan Hernandez, Ms. Cerrillo's son, aged 16.

¶ 8 On August 16, 2010, an attorney from CVLS entered an appearance on behalf of Ms. Cerrillo. On August 30, 2010, Ms. Cerrillo filed a motion seeking a court-ordered referral to foreclosure mediation and a motion to strike and dismiss the complaint. In her motion to strike and dismiss the complaint, Ms. Cerrillo alleged that CitiMortgage failed to properly allege the specific capacity in which it had brought the complaint. Ms. Cerrillo did not challenge the circuit court's jurisdiction over her in the motion to strike and dismiss.

¶ 9 On September 23, 2010, the circuit court denied Ms. Cerrillo's motion for referral to mediation, without prejudice, and granted CitiMortgage's leave to file an amended complaint. The order stated that Ms. Cerrillo had 28 days after the filing of the amended complaint to file an answer or responsive pleading. On September 27, 2010, CitiMortgage filed an amended complaint to foreclose the mortgage alleging it was the holder of the indebtedness and attached a copy of the note, mortgage, and assignment of the mortgage.

¶ 10 On October 20, 2010, Ms. Cerrillo filed an amended motion for a referral to mediation, and the motion was granted on November 22, 2010. However, no agreement was reached through mediation. The mediation was terminated on May 4, 2011.

¶ 11 On October 3, 2011, pursuant to CitiMortgage's motions, the circuit court entered orders finding all defendants in default, entering a judgment of foreclosure against them, and directing a

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sale of the residence. Ms. Cerrillo, on October 11, 2014, filed a motion to vacate those orders stating that her counsel inadvertently failed to attend the October 3, 2011, hearing on CitiMortgage's motions. In her motion, Ms. Cerrillo did not challenge the court's jurisdiction to enter the orders. The circuit court granted her motion, vacated the orders of default, foreclosure judgment, and sale, and allowed Ms. Cerrillo time to file an answer to the amended complaint.

¶ 12 On November 22, 2011, Ms. Cerrillo filed an answer and affirmative defense to CitiMortgage's amended foreclosure complaint. In her affirmative defense, she alleged that CitiMortgage lacked standing because it had not attached an endorsement for the note. Ms. Cerrillo did not challenge the circuit court's personal jurisdiction over her. CitiMortgage filed a reply to the affirmative defense on February 9, 2012, asserting that it had standing as the holder of the indebtedness and attached copies of the note, mortgage, and assignment of the mortgage thereto.

¶ 13 On February 14, 2012, CitiMortgage filed a motion for summary judgment against Ms. Cerrillo, a motion for default against the other defendants, and motions for entry of a judgment of foreclosure and to appoint a selling officer. Ms. Cerrillo did not respond to CitiMortgage's motions, including the motion requesting the entry of summary judgment against her. However, on March 2, 2012, she filed her first request to produce documents.

¶ 14 On February 21, 2013, Ms. Cerrillo's attorney filed a motion to withdraw as her counsel based on a lack of communication with Ms. Cerrillo. On March 20, 2013, the circuit court granted the motion to withdraw and ordered Ms. Cerrillo to retain new counsel or to file an appearance on her own behalf within 21 days. Ms. Cerrillo never complied with this order.

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¶ 15 On March 20, 2013, the circuit court also entered an order of default against the other defendants, including Mr. Cerrillo. Additionally, the circuit court granted CitiMortgage's motion for summary judgment against Ms. Cerrillo; entered a judgment of foreclosure against all defendants, ordered that the residence be sold; and appointed a selling officer.

¶ 16 As ordered by the circuit court, the sale of the residence took place on June 21, 2013, and the successful bidder was CitiMortgage. On July 5, 2013, CitiMortgage filed a motion to confirm the sale and mailed a copy of the motion to Ms. Cerrillo. On July 24, 2013, the circuit court entered an order confirming the sale and directing that the judicial deed be immediately issued to the successful bidder, CitiMortgage. No appeal was filed from this order.

¶ 17 Approximately one year later, on July 28, 2014, Ms. Cerrillo filed a *pro se* motion, which was titled "Defendant's Motion to Quash Service of Process Server for Lack of Personal Jurisdiction and Void Assignment of Mortgage and An Unlawful Foreclosure Complaint Not Signed Under Oath Per Rule 113 of the Illinois Supreme Court" (petition). The petition stated that it was brought pursuant to section 2-1401(f) of the Code (735 ILCS 5/2-1401(f) (West 2007)), and on behalf of both of the Cerrillos. However, only Ms. Cerrillo signed the petition.

¶ 18 In the petition, Ms. Cerrillo, argued the orders entered in the foreclosure case were void. Specifically, she argued that the assignment of the mortgage was not valid; the circuit court did not have jurisdiction over her because the special process server had not been properly appointed; and CitiMortgage lacked standing to bring the foreclosure suit.

¶ 19 On November 12, 2014, the circuit court entered an order which stated: "(1) the Court finds that the petition is being brought only by [Ms. Cerrillo] as she is not an attorney; (2) the

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Court had and has jurisdiction over [Ms. Cerrillo]; and (3) the Court specifically finds lack of diligence in bringing the instant petition; and (4) petition denied." Ms. Cerrillo now appeals.

¶ 20 In her *pro se* appellate briefs, Ms. Cerrillo asks that we reverse the circuit court's order denying the petition, and remand for a hearing on the petition. Ms. Cerrillo's chief complaints, as stated in her briefs, are that the circuit court: was biased against her because she was not a lawyer; did not allow her to present her arguments in support of the petition; became "aggressive" because, in her opinion, she challenged its jurisdiction; and did not explain why the petition was denied, "other [than] informing [her] that she was not a lawyer." Ms. Cerrillo also argues that the petition should have been granted because the circuit court, during the foreclosure action, lacked jurisdiction over her.

¶ 21 CitiMortgage responds that: section 2-1401 was not a proper vehicle for Ms. Cerrillo to challenge the orders entered in the foreclosure action; even if section 2-1401 applied, the petition was insufficient to grant relief; the circuit court had personal jurisdiction, as Ms. Cerrillo was properly served; and Ms. Cerrillo waived any challenge as to jurisdiction and standing. CitiMortgage also argues that Ms. Cerrillo's briefs failed to satisfy the requirements of Supreme Court Rules 341 (Ill. S. Ct. R. 341 (eff. Feb. 6, 2013)), and Supreme Court Rule 342 (Ill. S. Ct. R. 341 (eff. Jan. 1, 2005)) and, therefore, her appeal should be dismissed.

¶ 22 Ms. Cerrillo has failed to provide an appellant's brief which is compliant with Rule 341(h)(6), (7) (Ill. S. Ct. R. 341(h)(6), (7) (eff. Feb. 6, 2013)) and, thus, has waived review of the issues which may have been raised therein. As Rule 341(h)(6) states, the appellant's brief "shall contain [a statement of] the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on

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appeal." Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)), states that the 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." Our supreme court has stated that supreme court rules " 'are not aspirational. They are not suggestions. They have the force of law, and the presumption must be that they will be obeyed and enforced as written.' " *Rodriguez v. Sheriff's Merit Comm'n*, 218 Ill. 2d 342, 353 (2006) (quoting *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 494 (2002)).

¶ 23 Ms. Cerrillo's one-paragraph statement of facts failed to comply with Rule 341(h)(6), as it contains no history of the proceedings, or citations to the record. The statement of facts does not include a recitation of the factual and procedural basis for her jurisdictional argument. The statement of facts does not set forth the factual details of the hearing on the petition. It merely sets forth, in an argumentative fashion, the alleged manner in which the circuit court handled the petition on the date of the hearing.

¶ 24 We also note that the record on appeal does not include a transcript of the proceedings as to the hearing on the petition, nor a suitable substitute under Supreme Court Rule 323 (Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)). As the appellant, Ms. Cerrillo had the duty to present a record sufficient to allow review of the claimed errors. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of a complete record and a proper statement of facts, we presume the circuit court's denial of the petition was supported by the law and the facts (*id.*), and was not based on any bias toward Ms. Cerrillo's *pro se* status.

¶ 25 Additionally, the circuit court's written order does not support Ms. Cerrillo's account of the proceedings on the petition. Contrary to Ms. Cerrillo's arguments that the circuit court's only

explanation as to the denial of the petition was that she was unrepresented by counsel, the written order includes all the circuit court's reasons for its denial of the petition, including a finding that the circuit had personal jurisdiction over her. In its order denying the petition, the circuit court stated that because Ms. Cerrillo was appearing *pro se*, it considered that her petition was brought solely on her behalf and not also on behalf of Mr. Cerrillo, although her petition stated otherwise. As Ms. Cerrillo is not an attorney, the petition was not signed by Mr. Cerrillo, and he never appeared in this matter, the circuit court was correct in its conclusion. See, generally, *Applebaum v. Rush University Medical Center*, 231 Ill. 2d 429, 433-35 (2008) (a person not licensed to practice law may not represent another party in a legal proceeding). The order did not state that the petition was denied *because* Ms. Cerrillo appeared without counsel.

¶ 26 We also observe that the argument sections of Ms. Cerrillo's briefs do not clearly set forth her claims of error with citation to the record on appeal, as required by Rule 341(h)(7). Although the argument section includes citations to authority, Ms. Cerrillo does not fully explain the relevance of the cases or their holdings. Further, it appears that Ms. Cerrillo, in her briefs, did not raise certain arguments which she made in her petition, including her challenge to CitiMortgage's standing and her contention that the mortgage assignment was invalid. The issues not argued on appeal are waived. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 27 Ms. Cerrillo's argument as to jurisdiction was also not fully developed. Ms. Cerrillo's reference to jurisdiction in the argument section of her brief was that a foreclosure action, "infers the Court has jurisdiction to enter [an] order February 6, 2012 of Default 'without jurisdiction' and all subsequent orders entered based on that order are void themselves." Ms. Cerrillo did not cite to the record as to the purported February 6, 2012, order of default. We could find no order

of default entered by the circuit court on that date. Ms. Cerrillo does not explain the basis of her conclusion that the circuit court lacked personal jurisdiction, nor did she cite authority as to her conclusion that the circuit court was without jurisdiction on February 6, 2012, thus, rendering all other orders void. Furthermore, based on our review of the record, her personal jurisdiction argument does not have merit.

¶ 28 After the circuit court vacated the original default foreclosure judgment, Ms. Cerrillo was served by substitute service and by publication. Ms. Cerrillo appeared by counsel after service and she participated in the proceedings without objecting to jurisdiction. For example, Ms. Cerrillo moved to dismiss the original complaint for CitiMortgage's failure to sufficiently plead its capacity to seek foreclosure, but not for lack of jurisdiction. After CitiMortgage filed an amended complaint, Ms. Cerrillo filed an answer and affirmative defense challenging only CitiMortgage's standing, not the trial court's jurisdiction. Ms. Cerillo then sought and participated in court-ordered mediation and filed her discovery requests. Her first objection to the circuit court's jurisdiction, after she was served the second time, was when she filed the petition at issue after the sale was confirmed. Any personal jurisdiction objection was, therefore, waived. See 735 ILCS 5/2-301 (West 2014) (provides that objection to personal jurisdiction is waived by filing a responsive pleading or a motion—other than on seeking an extension of time to answer or, otherwise, appear—before filing a motion asserting the jurisdictional objection).

¶ 29 CitiMortgage's argument, that section 2-1401 relief is not available here, is also well made. In *U.S. Bank National Ass'n v. Prabhakaran*, 2013 IL App (1st) 111224, this court held that section 2-1401 petitions are not an available form of relief from judgments in mortgage foreclosure actions. *Id.* ¶¶ 26-30. We relied on section 15-1509(c) of the Mortgage Foreclosure

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Law (735 ILCS 5/15-1509(c) (West 2008)), which bars any challenge to a foreclosure judgment by any of the parties to the case once the circuit court confirms the sale of the property. See *id.* With this provision in mind, we held that the only method of reviewing the circuit court's judgment in this context is by a direct appeal. See *id.* ¶¶ 27-28. Because a section 2-1401 petition is a collateral action rather than a continuation of the underlying case, it is, therefore, barred by section 15-1509(c). See *id.* ¶ 30. While we have recognized an exception to the holding in *Prabhakaran*, where a section 2-1401 petition alleges a lack of personal jurisdiction (see *One West Bank, FSB v. Topor*, 2013 IL App (1st) 120010, ¶ 12 n. 1; *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 17 n. 3); however, that rationale does not apply here where the circuit court had jurisdiction over plaintiff who was served and participated in the foreclosure action without challenging personal jurisdiction. Thus, Ms. Cerrillo was not free to challenge the orders entered in the foreclosure action after the confirmation of the sale, by pursuing a section 2-1401 petition.

¶ 30 For the reasons stated, we affirm the denial of Ms. Cerrillo's petition brought pursuant to section 2-1401.

¶ 31 Affirmed.