

No. 1-15-0940

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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Bayview Loan Servicing, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	14 M1 706872
	)	
Edward Olshansky,	)	Honorable
	)	Abbey Fishman Romanek and
	)	Kristal Royce Rivers,
Defendant-Appellant.	)	Judges Presiding.
	)	

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JUSTICE HOWSE delivered the judgment of the court.  
Justices Ellis and Cobbs concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the circuit court's order granting possession of residential property to plaintiff and the circuit court's order that denied defendant's motion to quash service; the notice by posting complied with the requirements of the Forcible Entry and Detainer Act where plaintiff attempted to serve defendant through the Cook County Sheriff's Office prior to the appointment of a special

process server and then achieved service by posting pursuant to the Forcible Entry and Detainer Act.

¶ 2 After final judgment was entered in a mortgage foreclosure action, plaintiff Bayview Loan Servicing, LLC (Bayview) filed a forcible detainer action against defendant Edward Olshansky. Bayview unsuccessfully attempted service on defendant via the Cook County Sheriff's Office and a special process server, and then achieved service by posting. Olshansky filed a motion to quash service by posting, and the circuit court denied that motion. Olshansky filed a motion to reconsider the circuit court's ruling on his motion to quash, and that was also denied. The circuit court then entered an order granting possession of the subject property to Bayview. In this appeal, Olshansky argues that the circuit court did not have jurisdiction to enter the order granting possession of the subject property to Bayview where Olshansky had filed a notice of appeal the day before that ruling was entered. Olshansky also argues that service in this case was improper. For the reasons below, we affirm the circuit court's rulings with respect to jurisdiction and service of process.

¶ 3

#### BACKGROUND

¶ 4 On March 31, 2014, plaintiff Bayview Loan Servicing, LLC (Bayview) filed an action for Forcible Detainer – Complaint for Possession Only. The forcible detainer action was brought after a completed mortgage foreclosure action against the prior owners of property located at 1406 Voltz Road, Northbrook, Illinois 60062. Defendant Edward Olshansky lived in this property at the time.

¶ 5 Bayview attempted to serve Olshansky with the complaint at the subject property by issuing a summons on March 31, 2014 through the Cook County Sheriff's Office. That service was unsuccessful, and on April 21, 2014, the sheriff's office filed a return of service form indicating that no contact had been made at the property despite three service attempts.

¶ 6 An alias summons was then issued, and Bayview attempted to have Olshansky served by a special process service, United Processing, Inc. The special process server made five unsuccessful attempts to serve Olshansky at the subject property between April 26, 2014 and May 1, 2014. The return of the special process server noted that there were boxes stacked in the living room of the home as if someone was moving. In the days that followed, there was still no answer at the house and it appeared as if no one was living there. The return also noted that on May 1, 2014, a neighbor stated that a moving truck had been at the property almost a week prior and most of the furniture and large items were gone from the house.

¶ 7 On May 19, 2014, Bayview filed an affidavit of service by posting.

¶ 8 On July 9, 2014, Olshansky filed a motion to quash claiming that the mailing requirements for service by posting were not met because there was no notice stating the time and place where the sheriff posted and to whom and at what address he or she mailed copies of the notice, and Olshansky never received a copy of the posting by mail. The motion further argued that Bayview did not establish diligence prior to posting and that Olshansky "continues to reside in Illinois and has not left the state[.]" Attached to the motion was an affidavit stating that Olshansky did not receive a copy of the posting in the mail and that he resided and currently resides in the state of Illinois. On July 16, 2014, the circuit court granted Olshansky's motion to quash over Bayview's objection.

¶ 9 Bayview again attempted to serve Olshansky at the subject property. The special process server again unsuccessfully attempted service between July 27, 2014 and July 31, 2014, and reported that there was no answer at the door, there were packed boxes in the house, and it did not appear that anyone was living in the property.

¶ 10 On August 26, 2014, Bayview filed an affidavit for service by posting.

¶ 11 On or about September 2, 2014, the sheriff's office filed a certification that posting took place at three locations on August 29, 2014, and that notice was mailed to Olshansky at the subject property.

¶ 12 On September 18, 2014, an order for possession was entered in Bayview's favor.

¶ 13 On October 1, 2014, Olshansky filed a motion to vacate technical defaults, which was granted and the matter was continued to November 20, 2014.

¶ 14 On October 28, Olshansky re-filed the same motion to quash that he had previously filed in the matter. On November 20, 2014, the circuit court set a briefing schedule on the motion to quash.

¶ 15 On December 19, 2014, Bayview filed its response to the motion to quash. In its response, Bayview argues that the Cook County Sheriff's Office filed a certification that posting had taken place at three locations and that the sheriff had mailed the notice to Olshansky. Bayview further argued that it exercised due diligence in trying to serve Olshansky: service was attempted at various times in the day, but it appeared that no one lived at the subject property. Bayview also pointed out that Olshansky did not show that he could have been served even with due diligence. Instead, Olshansky asserted that he resided in Illinois.

¶ 16 On February 9, 2015, Olshansky filed his reply in which he argued that service was ineffective because Bayview did not comply with the First District Municipal Court's standing order governing the process by which a party can appoint a special process server.

¶ 17 On February 11, 2015, the circuit court denied Olshansky's motion to quash "upon finding of effective service attempts by special process server."

¶ 18 On March 9, 2015, Olshansky filed a motion to reconsider. The motion reiterated Olshansky's argument that service of process was conducted in violation of the court's standing order.

¶ 19 On March 20, 2015, the circuit court denied Olshansky's motion to reconsider.

¶ 20 On March 25, 2015, Olshansky filed a notice of appeal and amended notice of appeal. Both sought appeal of the circuit court's February 11, 2015 and March 20, 2015 orders.

¶ 21 On March 26, 2015, the circuit court entered an order for possession in favor of Bayview.

¶ 22 On April 6, 2015, Olshansky filed another notice of appeal seeking appeal of the circuit court's February 11, 2015, March 20, 2015, and March 26, 2015 orders. On appeal, Olshansky argues that: (1) the circuit court did not have jurisdiction to enter the March 26, 2015 order where Olshansky filed a notice of appeal on March 25, 2015, and (2) the circuit court erred in denying his motion to reconsider and motion to quash Bayview's service of process where Bayview failed to abide by the circuit court's standing order. For the reasons that follow, we affirm the circuit court's rulings.

¶ 23 ANALYSIS

¶ 24 Jurisdiction

¶ 25 Olshansky first argues that the circuit court did not have jurisdiction to enter the March 26, 2015 order granting possession of the subject property to Bayview where he had filed a notice of appeal the day before, on March 25, 2015. By filing a notice of appeal, Olshansky argues that the circuit court was divested of jurisdiction to enter any further orders, specifically the March 26, 2015 order. Bayview argues that the circuit court did have jurisdiction to enter the order for possession on March 26, 2015 because the March 25, 2015 notice of appeal was filed prematurely where the February 11, 2015 and March 20, 2015 orders were not final and

appealable orders. Bayview further argues that Olshansky concedes jurisdiction in his brief where he states that the appellate court has jurisdiction over this appeal by virtue of the April 6, 2015 notice of appeal. Olshansky does not respond to this argument in his reply brief. For the reasons below, we find that the circuit court had jurisdiction to enter the March 26, 2015 order granting Bayview possession of the subject property.

¶ 26 Here, Olshansky sought appeal of the circuit court's February 11, 2015 order denying his motion to quash service and the circuit court's March 26, 2015 order denying his motion to reconsider the February 11, 2015 order. "An order denying a defendant's motion to quash service of summons is neither a final judgment nor an appealable interlocutory order." *Burton v. Autumn Grain Transportation, Inc.*, 222 Ill. App. 3d 755, 756 (1991); *People ex rel. Department of Mental Health v. Brown*, 96 Ill. App. 2d 355 (1968); *Thomas v. Ritholz*, 310 Ill. App. 166, 167-68 (1941). Additionally, "if the order appealed from is not final and appealable, the notice of appeal neither deprives the trial court of jurisdiction to proceed with the case nor vests the appellate court with jurisdiction to review." *State ex rel. Beeler, Schad & Diamond, P.C. v. Target Corp.*, 367 Ill. App. 3d 860, 863-64 (2006) (quoting *Welch v. City of Evanston*, 181 Ill. App. 3d 49, 55 (1989)). As such, because Olshansky's March 26, 2015 notice of appeal and amended notice of appeal sought review of orders that were not final and appealable, the circuit court retained jurisdiction to enter its March 26, 2015 order granting possession of the subject property to Bayview.

¶ 27 Olshansky filed another notice of appeal on April 6, 2015 seeking appeal of the circuit court's February 11, 2015, March 20, 2015 and March 26, 2015 orders. Because the March 26, 2015 order was final and appealable, we address the remaining arguments in Olshansky's appeal.

¶ 28

Service of Process

¶ 29 Olshansky argues that the circuit court erred in denying his motion to reconsider its February 11, 2015 order, which denied his motion to quash, because Bayview failed to satisfy the personal service requirements of the municipal court's standing order by failing to first attempt service on Olshansky through the Cook County Sheriff's Office, and failed to satisfy the requirements of service by posting by failing to obtain leave of court to issue service by posting. Bayview, in turn, argues that service was proper because Bayview did in fact attempt service through the sheriff prior to requesting a special process server and further complied with the Forcible Entry and Detainer Act when issuing service by posting.

¶ 30 With respect to Olshansky's first argument that Bayview failed to attempt service by the sheriff's office before having a special process server appointed, the record clearly shows the factual basis for defendant's argument is inaccurate. The record before us shows the sheriff attempted service because it contains an affidavit of unsuccessful service of process at the subject property by the Cook County Sheriff's Office. Paragraph 6 of Municipal General Order 88-5 states:

“It shall be sufficient evidence to support the motion if the Clerk's Office computer docket reflects that the Sheriff of the applicable county has attempted but not made service upon the named defendant(s) and shall set forth the date of such return. In the alternative, a copy of original Sheriff's return or copy of Sheriff's electronic civil writ master record may be attached to the motion.”

Cook County Ill. Municipal Dep't Order, No. 88-5(M) (1988).

As such, Bayview did attempt service through the Cook County Sheriff's Office prior to requesting a special process server as required by the municipal court's standing order. Although

Olshansky points out that the record contains an order to appoint a special process server that is dated January 4, 2014, which technically was prior to when the sheriff's office attempted service, that order predates the filing of this forcible detainer action which was filed on March 31, 2014, and no attempts for service were made pursuant to that January 4, 2014 order. Further, prior to issuing service by posting, Bayview attempted service via a special process server between July 24, 2014 and July 31, 2014, which was after the sheriff's office unsuccessfully attempted service. Olshansky does not make any arguments about the propriety of the service that was attempted by the special process server.

¶ 31 Next, Olshansky argues that service in this case was improper where Bayview failed to obtain leave of court to allow service by posting. Olshansky's argument is based on the service requirements in the Civil Practice section of the Illinois Code of Civil Procedure (Code). See 735 ILCS 5/2-203.1 (West 2012). In response, Bayview first argues that Olshansky never made this argument before the circuit court and, therefore, waived it on appeal. Waiver aside, Bayview argues that because this case is governed by the Forcible Entry and Detainer Act (Forcible Entry Act), which is more specific than the Civil Practice procedures in the Code, the requirements for service under the Forcible Entry Act apply and those requirements do not require a party to motion the court for leave to effectuate service by posting. See 735 ILCS 5/9-107 (West 2012).

¶ 32 Section 9-107 of the Code, which falls under the Forcible Entry Act and is the provision Bayview argues should apply to service in this case, states:

"If the plaintiff, his or her agent, or attorney files a forcible detainer action, with or without joinder of a claim for rent in the complaint, and is unable to obtain personal service on the

defendant or unknown occupant and a summons duly issued in such action is returned without service stating that service can not be obtained, then the plaintiff, his or her agent or attorney may file an affidavit stating that the defendant or unknown occupant is not a resident of this State, or has departed from this State, or on due inquiry cannot be found, or is concealed within this State so that process cannot be served upon him or her, and also stating the place of residence of the defendant or unknown occupant, if known, or if not known, that upon diligent inquiry the affiant has not been able to ascertain the defendant's or unknown occupant's place of residence, then in all such forcible detainer cases whether or not a claim for rent is joined with the complaint for possession, the defendant or unknown occupant may be notified by posting and mailing of notices; or by publication and mailing, as provided for in Section 2-206 of this Act." 735 ILCS 5/9-107 (West 2012).

Under this provision, there is no requirement that a party in a forcible detainer action motion the court for leave prior to issuing service of summons by posting.

¶ 33 Section 2-203.1 of the Code, which falls under the Civil Practice provisions of the Code and is the provision that Olshansky argues should apply to service in this case, states:

"If service upon an individual defendant is impractical under items (1) and (2) of subsection (a) of Section 2-203, the plaintiff may move, without notice, that the court enter an order directing a comparable method of service. The motion shall be accompanied

with an affidavit stating the nature and extent of the investigation made to determine the whereabouts of the defendant and the reasons why service is impractical under items (1) and (2) of subsection (a) of Section 2-203, including a specific statement showing that a diligent inquiry as to the location of the individual defendant was made and reasonable efforts to make service have been unsuccessful. The court may order service to be made in any manner consistent with due process." 735 ILCS 5/2-203.1 (West 2012).

Under this provision, a party seeking to issue service of summons by a "comparable method of service" such as posting, is to make a motion to the court before doing so.

¶ 34 "When a general statutory provision and a more specific one relate to the same subject, we will presume that the legislature intended the more specific statute to govern." *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 346 (2008); *Moore v. Green*, 219 Ill. 2d 470, 480 (2006); *Knolls Condominium Ass'n v. Harms*, 202 Ill. 2d 450, 459 (2002). We find that the more specific statute, the Forcible Entry Act, applies here, and under that Forcible Entry Act there was no requirement that Bayview motion the court for leave prior to issuing service by posting.

¶ 35 Olshansky argues that the circuit court previously granted his motion to quash where Bayview failed to seek leave of the court prior to issuing service by posting. However, there is no support for this assertion in the record. On July 16, 2014, the circuit court issued an order granting Olshansky's motion to quash. However, the reason for granting the motion is not contained in the order, and the record does not contain a transcript of that hearing. Further, Olshansky's motion to quash does not contain any argument regarding Bayview's failure to seek

leave of court prior to issuing service by posting. Rather, the motion argues that the circuit court should have quashed service because: (1) the mailing requirements for service by posting were not met because there was no notice stating the time and place where the sheriff posted and to whom and at what address he or she mailed copies of the notice; (2) Olshansky never received a copy of the posting by mail; and (3) Bayview did not establish diligence prior to posting and that Olshansky "continues to reside in Illinois and has not left the state[.]" As such, Olshansky's argument that the circuit court previously quashed service where Bayview failed to seek leave of court prior to issuing service by posting is not supported by the record.<sup>1</sup>

¶ 36 Further, Olshansky's argument that section 2-206 of the Code, which is referenced in section 9-107 of the Forcible Detainer Act, comes into play in this case is flawed where it is clear that section 9-107's reference to section 2-206 is with respect to service by publication where the service at issue here is service *by posting*. Section 9-107 of the Forcible Detainer Act states that where service cannot be obtained after due diligence: "then in all such forcible detainer cases whether or not a claim for rent is joined with the complaint for possession, the defendant or unknown occupant may be notified by posting and mailing of notices; or by publication and mailing, as provided for in Section 2-206 of this Act." 735 ILCS 5/9-107 (West 2012). A plain reading of this language makes it clear that the reference to section 2-206 is with respect to service by publication and mailing, not service by posting and mailing of notices, which makes sense since section 2-206 of the Code governs "Service by publication; affidavit; mailing; certificate"; it does not govern service by posting. See 735 ILCS 5/2-206 (West 2012). Thus, Olshansky's argument that section 2-206 of the Code applies here is without merit.

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<sup>1</sup> It should be noted that Olshansky's July 9, 2014 motion to quash, which was granted, concedes that Bayview attempted service by posting pursuant to section 9-107 of the Forcible Detainer Act, and the arguments for quashing service that Olshansky makes in that motion are based on the provisions of section 9-107 of the Forcible Detainer Act. See 735 ILCS 5/9-107 (West 2012).

¶ 37 Olshansky does not make any substantive argument as to why the circuit court's March 26, 2015 order granting possession of the subject property in favor of Bayview was improper, and as we have found no issues with the circuit court's February 11, 2015 and March 20, 2015 orders, we affirm the circuit court's March 26, 2015 order.

¶ 38 **CONCLUSION**

¶ 39 For all the above reasons, we affirm the circuit court's orders denying Olshansky's motion to reconsider its February 11, 2015 order that denied Olshansky's motion to quash service and, accordingly, affirm the March 26, 2015 order granting Bayview possession of the property.

¶ 40 Affirmed.