2015 IL App (1st) 151190-U

THIRD DIVISION
December 9, 2015

No. 1-15-1190

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HEARTLAND BANK AND TRUST COMPANY, as Assignee of Federal Deposit Insurance Corporation in its capacity as Receiver for Western Springs National Bank and Trust, N.A.,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 07 CH 16155
WESTERN SPRINGS NATIONAL BANK AND TRUST U/T/A #4040, etc.; KONSTANTINOS D. ANTONIOU; KEVIN R. TIERNEY; et al.,	)	The Honorable Lisa R. Curcio,
Defendants-Appellants.	)	Judge Presiding.

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

ORDER

HELD: Appeal dismissed where order appealed from, namely, order extending period of enforcement of order for possession, was not a final and appealable order pursuant to which our court has jurisdiction to invoke review.

¶ 1 Following the trial court's entry of an order of possession against defendant-appellant Kevin R. Tierney (defendant) with respect to certain property, plaintiff-appellee Heartland Bank and Trust Company (Heartland), as Assignee of Federal Deposit Insurance Corporation (FDIC) in its capacity as Receiver for Western Springs National Bank and Trust, N.A. (WSNB), filed a motion to extend the period of enforcement of that order. The trial court granted Heartland's motion and entered an order extending the period of enforcement of the order for possession for an additional 120 days. Defendant appeals, contending that the trial court erred in granting Heartland's motion because Heartland failed to comply with statutory notice mandated for this relief, because Heartland is barred from obtaining this relief pursuant to the doctrine of unclean hands, and because the lack of subject matter jurisdiction rendered the underlying foreclosure in this cause and all subsequent orders, including the one at issue, void. He asks that we reverse the trial court's order. For the following reasons, we dismiss this appeal.

¶ 2 BACKGROUND

¶ 3 The facts of this cause are in no way new to this court. In fact, the same delinquent loan and foreclosure have, at last count, generated at least three circuit court cases and four separate appeals, with the instant cause, and yet another, still pending in our court. See, *e.g.*, *Heartland Bank and Trust Co. v. Western Springs National Bank and Trust*, No. 1-11-0831 (Nov. 23, 2011) (unpublished summary order under Supreme Court Rule 23(c)(2)); *Heartland Bank and Trust Co. v. Tierney*, No. 1-14-2517 (Sept. 16, 2015) (unpublished order under Supreme Court Rule 23); *Konstantinos D. Antoniou v. Heartland Bank and Trust Co.*, No. 1-15-0015 (Sept. 21, 2015) (unpublished order under Supreme Court Rule 23); *Heartland Bank and Trust Co. v. Konstantina*

Antoniou, No. 1-14-3931 (pending in the Illinois Appellate Court, First District). With this in mind, we reiterate only those facts necessary to the matter herein.

¶ 4 According to defendant, in February 2004, Konstantinos D. Antoniou,[1] the owner of real property located at 5221 Central Avenue in Western Springs, Illinois, allegedly agreed, via an oral statement and, later, an unrecorded lease, to rent a portion of the property to him with an option to purchase.

¶ 5 In March 2004, Antoniou sought mortgage refinancing for the property from WSNB. As a condition of refinancing, WSNB required that the property be conveyed into a WSNB land trust and mortgaged to WSNB. Antoniou did so, signing a trust agreement on March 12, 2004 naming as trustee WSNB under trust agreement #4040, and WSNB executed several loan documents, including a promissory note, an assignment of rents and a mortgage to lender WSNB. Then, on March 31, 2004, WSNB executed a deed in trust, conveying the property into the land trust and giving WSNB, as trustee, full title to the property, both legal and equitable. See *Chicago Federal Savings & Loan Ass'n v. Cacciatore*, 33 Ill. App. 2d 131, 138-39 (1961). Antoniou was the sole beneficiary of the land trust, and his interest was a personal property interest only. See, *e.g.*, *Chicago Federal*, 33 Ill. App. 2d at 138-39. The deed was recorded on April 5, 2004.

¶ 6 Eventually, Antoniou defaulted on the mortgage loan. In June 2007, WSNB filed a foreclosure action against him and the land trust and prevailed, obtaining a judgment of foreclosure on the property, which WSNB then purchased. The trial court approved the sale to WSNB on March 23, 2010. Antoniou did not appeal this decision.

---

[1]Antoniou is not a party to the instant appeal.

¶ 7 Soon thereafter, it was discovered that two parties not named as defendants in the foreclosure action were living at the property: Antoniou's mother[2] and defendant. On March 31, 2010, defendant recorded the purported February 4, 2004 lease with option to purchase with the county recorder. In April 2010, after prevailing in the foreclosure action against Antoniou and the land trust, WSNB filed a supplemental petition for possession against defendant. On October 28, 2010, the trial court awarded possession of the property to WSNB, declaring that "any interest claimed or held by Kevin R. Tierney be and is hereby terminated." Defendant appealed this decision to our court. While his appeal was pending, WSNB failed financially and, following its closure, the FDIC named Heartland WSNB's receiver and assignee in interest, including its interest in the property at issue. In November 2011, we affirmed the trial court's decision awarding possession of the property to WSNB, and now, to its receiver and assignee Heartland. See *Heartland Bank and Trust Co. v. Western Springs National Bank and Trust*, No. 1-11-0831 (Nov. 23, 2011) (unpublished summary order under Supreme Court Rule 23(c)(2)).

¶ 8 Defendant filed a petition for leave to appeal before the Illinois Supreme Court. In February 2012, while his petition was pending, and despite the trial and appellate court decisions explicitly declaring his interest in the property terminated, defendant recorded a "Notice of Exercise of Option to Purchase" and, days later, a subsequent "Amended Notice of Exercise of Option to Purchase."[3] In response, Heartland filed a declaratory action against defendant,

---

[2]Antoniou's mother is not a party in the instant appeal.

[3]The Illinois Supreme Court denied his petition for leave to appeal. See *Heartland Bank & Trust Co. v. Western Springs National Bank & Trust*, No. 113610 (Ill. Mar. 28, 2012) (table).

requesting that the trial court declare that he had no interest in the subject property. In December 2012, the trial court agreed, holding that defendant had no interest in the property and that any purported lease agreement or option to purchase he held was "null and void." Defendant appealed this decision to our court and, in September 2015, we affirmed, again specifically finding that defendant has no viable interest in the subject property. See *Heartland Bank and Trust Co. v. Tierney*, No. 1-14-2517 (Sept. 16, 2015) (unpublished order under Supreme Court Rule 23).[4]

¶ 9 During the time between the entry of the October 28, 2010 order for possession (awarded to WSNB before Heartland had become its receiver and assignee in interest to the property) and our September 16, 2015 decision affirming Heartland's declaratory judgment action, defendant remained at the subject property and possession in Heartland's favor was never enforced. Accordingly, on January 27, 2015, Heartland filed a motion to extend the period of enforcement of the order for possession. Defendant objected, asserting that all orders with respect to the property (beginning with the underlying foreclosure and sale and including the order for possession) were void for lack of subject matter jurisdiction, that Heartland failed to provide proper notice of its motion to extend, and that the order for possession should not be enforced because Heartland has "unclean hands." On April 14, 2015, the trial court granted Heartland's motion and entered an order extending the period of enforcement of the October 28, 2010 order

[4]Antoniou, meanwhile, filed a complaint to quiet title against Heartland in April 2014. Heartland filed a motion to dismiss, which the trial court granted with prejudice. Antoniou appealed that decision to our court and, also in September 2015, we affirmed, finding that Antoniou failed to state a claim. See *Antoniou v. Heartland Bank and Trust Co.*, No. 1-15-0015 (Sept. 21, 2015) (unpublished order under Supreme Court Rule 23).

for possession for an additional 120 days.

¶ 10 ANALYSIS

¶ 11 As noted, this appeal centers on the trial court's April 14, 2015 decision granting Heartland's motion to extend the period of enforcement of the October 28, 2010 order for possession and its accompanying order extending that period for 120 days. Citing the same objections he raised below, defendant contends on appeal that this decision was in error for three main reasons: Heartland did not comply with statutory requirements for notice of its motion, Heartland has "unclean hands" and is barred equitably from prevailing on this motion, and the lack of subject matter jurisdiction renders the trial court's judgment legally void.

¶ 12 However, before we may address these issues raised by defendant, we must first consider whether we have jurisdiction to review this appeal. See *North Community Bank v. 17011 South Park Avenue, LLC*, 2015 IL App (1st) 133672, ¶ 24; accord *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994) (before considering merits of any appeal, our first duty is to consider our own jurisdiction over the matters presented). Ultimately, when our jurisdiction is lacking, we must dismiss the appeal. See *North Community Bank*, 2015 IL App (1st) 133672, ¶ 24.

¶ 13 Again, defendant is appealing the trial court's April 14, 2015 order extending the period of enforcement of the October 28, 2010 order for possession. In his brief on appeal, defendant insists that this order is a final judgment. He cites sections 15-1701(h)(4) and 9-117 of the Illinois Code of Civil Procedure (Code) (see 735 ILCS 5/15-1701(h)(4), 9-117 (West 2014)), and states that, in his view, the order for possession's viability had lapsed since over four years had

passed between the time of that order's entry and Heartland's filing of its motion to extend. He continues by characterizing Heartland's motion as the revival of an unenforceable order and not as the mere compliance with a viable order which had retained force and effect, and asserts that, as such, Heartland's motion to extend " 'affects the substantial rights of the parties in its enforcement' by altering the [October 28, 2010 order for possession] from unenforceable to enforceable," and thereby renders the trial court's grant of that motion a final and appealable judgment prime for our review.

¶ 14 Heartland, meanwhile, disputes this and insists that the trial court's decision was not a final and appealable order conferring jurisdiction on our court. Heartland points out that the trial court's April 14, 2015 order does not change or set aside the final judgment because defendant's substantial rights under the judgment had already been determined and appealed. Thus, Heartland insists, because they remain exactly the same as they were when the order for possession was entered on October 28, 2010, namely, that possession was ordered in favor of Heartland and against defendant, the trial court's latest order is not appealable and we have no jurisdiction here.

¶ 15 We find, contrary to defendant's insistence, that Heartland is correct.

¶ 16 "A final order is one that 'disposes of the rights of the parties either with respect to the entire controversy or some definite and separate portion thereof.' " *In re Estate of Pawlinski*, 407 Ill. App. 3d 957, 962 (2011), quoting *In re Estate of Yucis*, 382 Ill. App. 3d 1062, 1069 (2008). In contradistinction, orders subsequent to these that are only incidental to the ultimate rights of the parties as already adjudicated, such as those entered "merely for the purpose of carrying out

or executing the matters which had been determined by the previous orders," are not considered final and appealable. *Bank of Ravenswood v. Maiorella*, 104 Ill. App. 3d 1072, 1074 (1982); accord *Perrell v. Liebman*, 257 Ill. App. 133, 137 (1930). This is because such subsequent orders do not change or set aside the prior judgment nor do they affect the substantial rights of the parties via their enforcement. See *Bank of Ravenswood*, 104 Ill. App. 3d at 1074. Rather, they merely carry out that which has already been decided and remains unchanged.

¶ 17 In the instant cause, the trial court's April 14, 2015 order extending the period of enforcement of the October 28, 2010 order for possession for an additional 120 days in no way sets aside the prior judgment nor does it affect the substantial rights of the parties in the enforcement of the judgment. Rather, the prior judgment and the rights of the parties stand possession of the property belongs to Heartland and not to defendant. That was what the trial court ordered on October 28, 2010, and that did not change when the trial court entered the instant order of April 14, 2015, from which defendant appeals. In other words, contrary to defendant's mischaracterization, nothing that was "unenforceable" was made "enforceable." It was never as if, due to Heartland's lack of enforcement, the trial court's prior ruling awarding it possession of the property over defendant was going to somehow lose its viability and result in a reversion of possession of the property back to defendant. Instead, the parties' substantial rights had already been determined and, in fact, appealed by defendant himself. Possession belongs to Heartland and any interest defendant may have had in the property is, and repeatedly has been, declared null and void.

¶ 18 Defendant presents us with no citation to any case law or other legal support for his

argument here. And, indeed, we have found very similar cases that contrarily support our conclusion. For example, in *Bank of Ravenswood*, a judgment for foreclosure and sale was entered against the defendant and in favor of the plaintiff bank, which then became the successful bidder and obtained the property at issue. The trial court entered an order approving the sale, and no appeal was taken from that order. Several months later, however, the defendant was still living at the property and refused to leave, so the plaintiff bank sought and obtained an order of "writ of assistance" from the trial court and the defendant was finally evicted. The defendant then appealed the order of writ of assistance. See *Bank of Ravenswood*, 104 Ill. App. 3d at 1072-73. Our court dismissed the defendant's appeal, finding that it did not have jurisdiction over the matter because the order appealed from was not final and appealable. See *Bank of Ravenswood*, 104 Ill. App. 3d at 1074-75. We noted that the plaintiff bank sought the writ of assistance, and the trial court granted it, "merely for the purpose of carrying out or executing the matters which had been determined by the previous orders," namely, the foreclosure and sale of the property which had divested any right the defendant had therein and which had secured these rights in the plaintiff bank. *Bank of Ravenswood*, 104 Ill. App. 3d at 1074. Accordingly, because the rights of the parties had not changed upon the grant of the writ of assistance, which did nothing more than enforce the parties' rights as previously declared, we concluded that the defendant's appeal from that nonappealable order could not be had in our court. See *Bank of Ravenswood*, 104 Ill. App. 3d at 1074-75.

¶ 19 Our decision in *Bank of Ravenswood* was further supported by our prior decision in *Perrell.* Similarly, in that case, the Liebmans gave the Perrells possession of certain real estate

based upon specific conditions. The Perrells failed to perform these conditions, and the Liebmans commenced a forcible detainer proceeding against them. Following litigation, it was ordered that the Liebmans were entitled to immediate possession of the property and the Perrells were to surrender it; the Perrells, however, refused to obey the order for possession. Thereupon, the trial court issued an order for writ of assistance to enforce its prior order for possession, and the Perrells appealed. See *Perrell*, 257 Ill. App. at 134-36. We dismissed the appeal, finding that the order appealed from was not appealable. See *Perrell*, 257 Ill. App. at 137. We distinguished that the order which settled the rights of the parties was the prior, original, decree for possession; that was a final and appealable order, and no appeal had been taken therefrom. See *Perrell*, 257 Ill. App. at 137. The order for writ of assistance, in contrast, was issued only to effectuate the decree and was entered merely for the purpose of carrying out or executing the matters which were determined by that final decree, *i.e.*, possession, which had been granted in favor of the Liebmans. See *Perrell*, 257 Ill. App. at 137. Accordingly, because the order appealed from was not appealable, the Perrells' appeal from it could not proceed. See *Perrell*, 257 Ill. App. at 137.

¶ 20 The instant cause mirrors *Bank of Ravenswood* and *Perrell* and merits the same result. The order extending the period of enforcement of the order for possession in this cause is directly analogous to the writs of assistance entered in those cases. It is an order entered subsequent to a final and appealable judgment (order for possession) for the purpose of carrying out or executing the matters which were determined by that prior, final decree (possession of the property). It does not change the parties' rights in relation to each other or the property, but only enforces their

rights as previously declared.

¶ 21 We speculate, from a timing standpoint, that what occurred here was that Heartland simply failed initially to exercise its rights under the order of possession when it was entered on October 28, 2010 presumably due to the ensuing chaos it assumed when it was named WSNB's receiver and assignee in interest to this and many other properties which, incidentally, occurred very soon after the order for possession in this cause was entered. This enured to defendant's benefit, as he was able to stay at the property for several more years. But, whatever the reason, the fact remains that the April 14, 2015 order extending the period of enforcement did not change anything; as per the order for possession (and all the other orders entered with respect to the subject property), the property belongs to Heartland, not defendant. Interestingly, we would note that the record reveals that defendant was more than aware even at the trial level that our jurisdiction was a matter of concern. At the time the trial court issued the instant order he is attempting to appeal here, defendant requested Illinois Supreme Court Rule 304(a) final and appealable language be included so that he could appeal it. The trial court, however, denied his request. Ultimately, because neither a prior judgment nor the parties' substantial rights were set aside or affected in any way by the trial court's order extending the period of enforcement, this order is not appealable and we have no jurisdiction to hear this cause.

¶ 22 Defendant asserts that, because Heartland's motion to extend the period of enforcement was brought pursuant to statute, namely, sections 15-1701(h)(4) and 9-117 of the Code, "court consideration of defenses" is "required." As such, he insists that the October 28, 2010 order for possession "became unenforceable February 25, 2011," and the trial court's order extending the

period of enforcement of that order for possession "was not ministerial or perfunctory." Based upon our review of the statutes at issue, we wholly disagree.

¶ 23 Section 15-1701(h)(4), which deals with the right to possession of subject property in proceedings where, as here, a party is subsequently named after the original foreclosure via a supplemental petition for possession, states, in relevant part:

> "An order for possession obtained under this Section *** shall be enforceable for no more than 120 days after its entry, except that the 120-day period may be extended to the extent and in the manner provided in Section 9-117 of Article IX ***." 735 ILCS 5/15-1701(h)(4) (West 2014).

In conjunction with this, section 9-117, which deals with the expiration of judgments, states:

> "No judgment for possession obtained in an action brought under this Article may be enforced more than 120 days after judgment is entered, unless upon motion by the plaintiff the court grants an extension of the period of enforcement of the judgment." 735 ILCS 5/9-117 (West 2014).

After describing certain notice requirements, section 9-117 then states:

> "The court shall grant the motion for the extension of the judgment of possession unless the defendant establishes that the tenancy has been reinstated, that the breach upon which the judgment was issued has been cured or waived, that the plaintiff and defendant entered into a post-judgment agreement whose terms the defendant has performed or that other legal or equitable grounds exist that bar enforcement of the judgment." 735 ILCS 5/9-117 (West 2014).

¶ 24 With respect to defendant's assertion that the October 28, 2010 order for possession became "unenforceable" on February 25, 2011 (120 days later), he provides us with no legal support for such a conclusion, and we find that neither section cited here intimates as much. Rather, neither section 15-1701(h)(4) nor section 9-117 declares that an order of possession becomes "unenforceable" after 120 days. They state only that such an order shall be enforceable for 120 days after its entry, and that this 120-day period of enforceability may be extended upon motion of the plaintiff. See 735 ILCS 5/15-1701(h)(4), 9-117 (West 2014). The statutes give no other time frame, such as a mandatory time in which the plaintiff is required to file its motion for extension, or a cutoff at which point an order for possession expires. Here, Heartland followed the dictates of the statutes; it filed a motion to extend the 120-day enforceability period of the order for possession, which was granted by the trial court. That it did so in January 2015, rather than at some point earlier, is, pursuant to the statutes at issue, irrelevant. See *Gaffney v. Board of Trustees of Orland Fire Protection Dist.*, 2012 IL 110012, ¶ 56 (when plain language of statute is unambiguous, court cannot look outside it or declare that legislature did not mean what the plain language states, no matter what subtle or apparent intention it had, to add any exceptions, limitations or conditions not already present); accord *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 181-84 ("[t]here is no rule of statutory construction that authorizes a court to declare that the legislature did not mean what the plain language of the statute says"). Accordingly, without more, we cannot find defendant's argument to be viable on this point.

¶ 25 Next, defendant argues that he demonstrated, under section 9-117, "other legal or equitable grounds exist" that barred the trial court from extending the period of enforcement of

the order for possession. As we noted earlier, section 9-117 states that the trial court "shall grant the motion for the extension of the judgment of possession unless the defendant establishes" any one of four specific conditions, namely, that the tenancy has been reinstated, the breach upon which the judgment was issued has been cured or waived, the plaintiff and the defendant entered into a postjudgment agreement with which the defendant has complied, or that a legal or equitable ground exists to bar the extension. 735 ILCS 5/9-117 (West 2014). With respect to this last condition, which is the only defendant argues here,[5] he insists that the trial court was barred from entering an extension on the order for possession because Heartland has "unclean hands" and because the trial court lacked subject matter jurisdiction, beginning with the underlying foreclosure action.

¶ 26 However, neither of these claims presents any sort of bar to the trial court's grant of Heartland's motion for extension under section 9-117. First, as to "unclean hands," defendant refers us to an entirely different cause of action affecting a wholly different property and involving completely different parties. That is, he mentions an agreement for purchase and sale for "4732 Central Avenue" in Western Springs, Illinois, between "assignor WSNB and assignee Bill Adrianos," claiming that, in that situation, WSNB proceeded with a mortgage foreclosure as if no assignment and sale had occurred and acted "wrongfully and misl[e]d the trial court and opposing parties" in that matter. He then insists that situation resulted in Heartland having

[5]Defendant makes no argument regarding the first three conditions of section 9-117 and has presented no evidence to show that his tenancy has been reinstated, the foreclosure resulting in the order for possession was cured or waived, or that he and Heartland have entered into any sort of postjudgment agreement regarding possession of the subject property. See 735 ILCS 5/9-117 (West 2014).

"unclean hands" with respect to what has occurred with the subject property. Not only are defendant's assertions completely irrelevant and unsupported by anything in the record before us, but they do not provide a basis for a finding of unclean hands, which, in the context of mortgage foreclosures, requires that the behavior complained of arise out of the transaction at issue in which the note and mortgage were given not some other property or other transaction. See *Klehm v. Grecian Chalet, Ltd.*, 164 Ill. App. 3d 610, 615 (1987). As none of his assertions regarding an equitable bar due to unclean hands applies to any of the transactions involving the subject property at issue here, they are completely meritless.

¶ 27 Second, as to subject matter jurisdiction, defendant insists that the trial court was legally barred under section 9-117 of the Code from granting Heartland's motion to extend because it lacked subject matter jurisdiction over the underlying foreclosure and sale of the property and, in turn, every subsequent order entered with respect to the property thereafter, including the order for possession and the instant order to extend the period of enforcement of the order for possession. In so arguing, defendant is clearly attempting to revive the exact same argument he made to this court in *Heartland Bank and Trust Co. v. Tierney*, No. 1-14-2517 (Sept. 16, 2015) (unpublished order under Supreme Court Rule 23), his prior appeal of Heartland's declaratory judgment action against him in which the trial court had declared his interest in the property "null and void." However, just as he did then, defendant again confuses standing with subject matter jurisdiction. The latter refers to the "power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). This power involves only the consideration of

the presence of a justiciable matter, which categorically includes foreclosure actions. See *Beal Bank v. Barrie*, 2015 IL App (1st) 133898, ¶ 21; *Nationstar Mortgage, LLC v. Canale*, 2014 IL App (2d) 130676, ¶ 14; see also *In re Luis R.*, 239 Ill. 2d 295, 301 (2010). Therefore, and as we held in that prior appeal, the trial court here undeniably had subject matter jurisdiction over this cause and, thus, had the power to enter the foreclosure and sale orders, and any subsequent order, including the order for possession and the instant order extending the period of enforcement of the order for possession. See *Heartland Bank and Trust Co. v. Tierney*, No. 1-14-2517 (Sept. 16, 2015), ¶¶ 26-31 (unpublished order under Supreme Court Rule 23) (specifically and directly disposing of this same argument, and including the distinguishment of *Jenner v. Wissore*, 164 Ill. App. 3d 259 (1988), upon which he principally relied in that prior appeal and upon which he relies again in the instant cause).[6]

¶ 28 Accordingly, without demonstrating a viable legal or equitable ground that would bar the enforcement of the judgment, defendant fails to show how the trial court would have been barred from granting Heartland's motion to extend the period of enforcement of the order for possession under section 9-117 or, more specifically, that his claim is even reviewable in our court.

¶ 29 As a final matter, defendant devotes a large portion of his brief on appeal arguing a lack of notice of Heartland's motion to extend which, as he did with his claims regarding unclean hands and subject matter jurisdiction, he insists is a matter requiring review despite any jurisdictional concerns because, again, it is a defense brought pursuant to statute. While we

[6]While unpublished Rule 23 orders are generally not to be cited because they are not precedential, they may indeed be cited to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case. See Ill. Sup. Ct. R. 23(e)(1) (eff. July 1, 1994).

soundly disagree with this as we have already found that his appeal is not a viable one, we note simply that notice was not an issue here. Defendant is correct, and we have already noted, that section 9-117 requires a plaintiff's notice of its motion to extend the period of enforcement of the order for possession to be "directed to the defendant" and "shall contain" certain, specific language, as provided therein. 735 ILCS 5/9-117 (West 2014). Defendant maintains that, because Heartland served the notice of its motion on his attorney rather than on him, and because the notice did not specifically track the language quoted in the statute, it was defective and barred the trial court from granting the motion to extend. However, nothing in section 9-117 mandates that a defendant himself be served with notice of a motion to extend the period of enforcement; it merely requires that notice be "directed to the defendant." 735 ILCS 5/9-117 (West 2014). Defendant was, and has been continuously, represented by the same counsel since 2010 long before 2014 when Heartland filed its motion to extend. This counsel even appeared in court on the day Heartland presented the motion to the trial court and he filed a brief on defendant's behalf in response thereto. Moreover, as we concluded earlier, this motion to extend was not attempting to institute a new lawsuit; it was merely filed to finally effectuate the already-established rights of the parties. It was not as if defendant was somehow unaware that he had been divested of possession; a trial court order to that effect had already been entered in 2010, he appealed it, and that order was affirmed repeatedly, no less. Furthermore, and in light of the circumstances presented, Heartland's failure to track the exact language of the statute in its notice would not act as a bar to the trial court's decision to grant the motion to extend. This is because, while Heartland did not use this language in the notice, it did provide it in the motion itself,

thereby adequately notifying defendant of its legal actions, and defendant, who appeared and filed a brief contesting this very motion, demonstrates no evidence of any prejudice to him as a result of Heartland's omission. See, *e.g.*, *Fehrenbacher v. Mercer County*, 2012 IL App (3d) 110479, ¶¶ 15-16 (noting that " '[s]ubstantial compliance can satisfy even a mandatory provision' " of a statute (quoting *Behl v. Gingerich*, 396 Ill. App. 3d 1078, 1086 (2009)), if purpose of statute is otherwise achieved and the defendant fails to show he was prejudiced). Therefore, again, defendant fails to show any legitimate bar to the trial court's ability to grant Heartland's motion to extend the period of enforcement of the order for possession, or any power on our part to even review this nonappealable order.

¶ 30 CONCLUSION

¶ 31 Accordingly, because the trial court's April 14, 2015 order extending the period of enforcement of the order for possession with respect to the subject property, from which defendant appeals, is not final and appealable, we dismiss the instant appeal.

¶ 32 Appeal dismissed.