2015 IL App (2d) 150152-U
No. 2-15-0152
Order filed December 16, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

NATIONSTAR MORTGAGE LLC,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-CH-3898
	)	
ANTHONY ARCURI and HERITAGE AT STRATFORD HOMEOWNERS' ASSOCIATION,	)	
	)	
Defendants	)	Honorable
	)	Robert G. Gibson,
(Deanne Arcuri, Defendant-Appellant).	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Schostok and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in denying defendant's motion to quash service and vacate a foreclosure judgment against her for lack of personal jurisdiction: defendant's motion was timely, as only her husband had previously appeared; she did not forfeit her objection as to the foreclosure judgment by contesting on the merits the later judgment confirming the sale; as the summons did not name her as a defendant, she was not properly served.

¶ 2 In this foreclosure action, defendant Deanne Arcuri (defendant) appeals the denial of her motion to quash service filed under section 2-301 of the Code of Civil Procedure (Code) (735

ILCS 5/2-301 (West 2012)). Plaintiff, Nationstar Mortgage, LLC, failed to name defendant on the face of the summons, but named her on an attachment directing that she be served. Defendant contends that, because of the defect in the summons, the judgment of foreclosure against her is void. We agree. Accordingly, we vacate and remand.

¶ 3 I. BACKGROUND

¶ 4 On August 17, 2011, plaintiff filed a filed a complaint for foreclosure against defendant, her husband Anthony Arcuri, and other defendants. A summons was issued on a form provided by Du Page County. The case caption listed Anthony Arcuri *et al*. as defendants. A line on which names could be added was left blank. A second page was attached to the summons, directing that it be served on a list of defendants that included both defendant and Anthony at the same address. On August 21, 2011, defendant was served by substitute service on Anthony at the address provided.

¶ 5 On December 20, 2011, attorney Brian Covert filed an appearance on behalf of Anthony. A line on the form stating "[i]nsert the name of the party for whom you are entering the appearance" listed only Anthony. Defendant's name did not appear on the form. On January 17, 2012, Covert filed a motion to dismiss. The caption of the motion listed only Anthony as the defendant and began with the words "NOW COMES Defendant, Anthony Arcuri, by and through his attorney of record, Brian Covert, for his Motion to Dismiss Plaintiff's Complaint in lieu of *her* Answer." (Emphasis added.) Defendant's name did not appear anywhere in the motion. The motion alleged that the complaint was insufficient. No ruling on the motion appears in the record. However, after three dates in which no appearance was listed for any defendant, on December 23, 2013, plaintiff moved for an order of default and a judgment of foreclosure and sale based on the pleadings. As part of those motions, plaintiff's attorney filed a

certificate stating that the only appearance of record was from Anthony and that all other parties to the cause had failed to file their appearances. On December 24, 2013, the trial court, using what appeared to be a preprinted form, noted an appearance and request by Anthony to file an answer and continued the action to February 27, 2014, allowing "defendant mortgagor" 28 days to appear and answer the complaint. No answer was filed.

¶ 6 On February 21, 2014, plaintiff again moved for an order of default and a judgment of foreclosure and sale based on the pleadings. As part of those motions, plaintiff's attorney again filed a certificate stating that the only appearance of record was from Anthony and that all other parties to the cause had failed to file their appearances. On February 27, 2014, the trial court entered an order of default and a judgment of foreclosure and sale.

¶ 7 A notice of sale was sent to the parties and, on June 2, 2014, attorney Matthew Gurvey filed an appearance on behalf of defendant. On June 3, 2014, defendant filed an emergency motion to quash service under section 2-301, alleging that the foreclosure judgment was void because the summons was defective on its face under Illinois Supreme Court Rule 101(d) (eff. May 30, 2008) when it failed to name her as a defendant.

¶ 8 Plaintiff filed a response, arguing that defendant's motion was untimely under section 15-1505.6(a) of the Illinois Foreclosure Law (735 ILCS 5/15-1505.6(a) (West 2012)), which bars motions to quash service filed over 60 days after the entry of the movant's appearance or the date that the movant first participated in a hearing without filing an appearance. Plaintiff argued that it was reasonable to infer that defendant appeared through Covert at the December 20, 2011, hearing because Anthony and defendant were married and the sole mortgagors of the property. No arguments concerning appearances at other hearings were made. In the alternative, plaintiff argued that the failure to list defendant on the face of the summons was a technical defect that

did not deprive the court of personal jurisdiction over defendant. Defendant replied, disputing both arguments. On September 16, 2014, the trial court denied the motion to quash "[f]or reasons stated on the record." There is no transcript or substitute for a transcript of that hearing in the record.

¶ 9 On October 7, 2014, an order approving sale was entered. On October 16, 2014, defendant moved to vacate the order, arguing that plaintiff failed to provide her attorney notice of its motion to approve the sale. On December 2, 2014, the court granted the motion to vacate. Defendant then filed a substantive objection to the order approving sale, arguing that plaintiff failed to submit all receipts and that a discrepancy in records suggested that there was a surplus resulting from the sale. Plaintiff refuted the allegation and, on January 29, 2015, the objection was overruled and the order approving sale was reinstated. Defendant appeals.

¶ 10 II. ANALYSIS

¶ 11 Defendant contends that the summons was fatally defective and resulted in a lack of personal jurisdiction over her, making the underlying foreclosure void. Plaintiff contends that either defendant's motion to quash was untimely under section 15-1505.6(a) or that she forfeited her argument by voluntarily submitting to the trial court's jurisdiction after her motion to quash was denied. In the alternative, plaintiff argues that the summons was sufficient and that any defect did not deprive the court of jurisdiction.

¶ 12 A valid judgment requires that a court have subject matter jurisdiction and jurisdiction over the parties. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. A judgment entered by a court without jurisdiction over a party is void and may be challenged at any time. *Id.* "Personal jurisdiction may be established either by service of process in

accordance with statutory requirements or by a party's voluntary submission to the court's jurisdiction." *Id*. ¶ 18.

¶ 13 Section 15-1505.6(a) provides a time limitation on the ability to object to jurisdiction after an appearance is entered, providing in part:

> "(a) In any residential foreclosure action, the deadline for filing a motion to dismiss the entire proceeding or to quash service of process that objects to the court's jurisdiction over the person, unless extended by the court for good cause shown, is 60 days after the earlier of these events: (i) the date that the moving party filed an appearance; or (ii) the date that the moving party participated in a hearing without filing an appearance." 735 ILCS 5/15-1505.6(a) (West 2012).

¶ 14 In regard to section 15-1505.6(a), plaintiff argued to the trial court that it should infer that Covert entered an appearance for defendant. On appeal, plaintiff contends that, because the trial court denied the motion to quash for reasons stated on the record and no transcript of the hearing or substitute has been provided, defendant has failed to show that she was not represented by Covert.

¶ 15 "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record 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. 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, 391-92 (1984). However, where there is a sufficiently complete record of the proceedings at trial, such a presumption does not apply. See *People v. Banks*, 378 Ill. App. 3d 856, 869 (2007).

¶ 16 Here, the record is clear that defendant was not included in Covert's appearance. Plaintiff contended that such an inference was proper because Anthony and defendant were married and the motion to dismiss contained one use of the pronoun "her." But the appearance clearly listed only Anthony as the represented party. Likewise, the motion to dismiss listed only Anthony as the moving party. Most important, plaintiff twice conceded that the only appearance of record was from Anthony and that all other parties had failed to file their appearances. Accordingly, the record sufficiently shows that defendant was not included in Covert's appearance. Thus, defendant's motion to quash was not time-barred by section 15-1505.6(a).

¶ 17 Plaintiff next argues that defendant forfeited her objection to jurisdiction by proceeding on the merits after the court denied her motion to quash. Under section 2-301(a), the filing of a responsive pleading or motion constitutes a waiver of any objection to the court's personal jurisdiction over the defendant. 735 ILCS 5/2-301(a-5) (West 2012). However, our supreme court has clearly held that " 'a party who submits to the court's jurisdiction does so only prospectively and the appearance does not retroactively validate orders entered prior to that date.' [citation.]" *BAC Home Loans Servicing*, 2014 IL 116311, ¶ 43. To hold otherwise would deprive the defendant of her day in court. *Id*. Thus, defendant did not forfeit her objection to personal jurisdiction as to previous orders, such as the judgment of foreclosure, by seeking to invalidate the order approving sale after her motion to quash was denied.

¶ 18 Turning to the merits, defendant argues that the trial court never obtained personal jurisdiction to enter the judgment of foreclosure, because the summons failed to name her as a defendant.

¶ 19 "Generally, a judgment rendered without service of process, where there has been neither a waiver of process nor a general appearance by the defendant, is void regardless of whether the

defendant had actual knowledge of the proceedings." *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 172 Ill. App. 3d 993, 1001 (1988). Accordingly, a foreclosure judgment entered without service of process is void. *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 12. Where a summons is invalid, service of the same is also without effect. *Schorsch*, 172 Ill. App. 3d at 1001.

¶ 20 In Illinois, the use of summons is governed by statute and supreme court rules. Section 2-201(a) of the Code provides for the issuance of summons in civil cases and states: "Every action, unless otherwise expressly provided by statute, shall be commenced by the filing of a complaint. *** The form and substance of the summons, and of all other process, and the issuance of alias process, and the service of copies of pleadings shall be according to rules." 735 ILCS 5/2-201(a) (West 2012).

¶ 21 Illinois Supreme Court Rule 101(a) (eff. May 30, 2008) provides for the form of the summons and states:

> "The summons shall be issued under the seal of the court, tested in the name of the clerk, and signed with his name. It shall be dated on the date it is issued, shall be directed to each defendant, and shall bear the address and telephone number of the plaintiff or his attorney."

¶ 22 Rule 101(d) provides a sample form for the summons, stating that the summons shall be "substantially" in the form provided. Ill. S. Ct. R. 101(d) (eff. May 30, 2008). That form includes a caption that directs "naming all defendants." *Id.* Illinois Supreme Court Rule 131(c) (eff. Jan 4, 2013), pertaining to pleadings and other documents, provides that, in cases where there are multiple parties, "it is sufficient in entitling documents, *except a summons*, to name the

first-named plaintiff and the first-named defendant with the usual indication of other parties." (Emphasis added.)

¶ 23 "The procedures for issuance of summons set forth in section 2-201(a) and the supreme court rules must be adhered to in order to give the court personal jurisdiction over a defendant." *Schorsch*, 172 Ill. App. 3d at 1001. Further, "a summons which does not name a person on its face and notify him to appear, is no summons at all, so far as the unnamed person is concerned." *Ohio Millers Mutual Insurance Co. v. Inter-Insurance Exchange of the Illinois Automobile Club*, 367 Ill. 44, 56 (1937); see also *Theodorakakis v. Kogut*, 194 Ill. App. 3d 586, 588 (1990) (stating the same).

¶ 24 For example, in *Ohio Millers Mutual*, a summons that failed to name approximately 3,000 people on its face was invalid. *Ohio Millers Mutual*, 367 Ill. at 56. In *Schorsch*, the summons was not issued, signed, or dated by the clerk of the court, and thus it was invalid. *Schorsch*, 172 Ill. App. 3d at 1001 (citing *Ohio Millers Mutual*, 367 Ill. at 56). In *Theodorakakis*, a summons was invalid when a trust was designated with the wrong number, even though the body of the complaint contained the correct number. *Theodorakakis*, 194 Ill. App. 3d at 589.

¶ 25 We recently addressed the effect of the failure to name a defendant on the face of a summons and reaffirmed the principles from *Ohio Millers Mutual* and *Theodorakakis*. See *Arch Bay Holdings v. Perez*, 2015 IL App (2d) 141117. There, as here, the summons failed to name the defendant on its face and instead included the defendant's name on an attachment page. We rejected the plaintiff's argument that the summons substantially complied with the model form, as the model form requires the names of all defendants in the caption. Thus, the rule requires the summons to have the substantial equivalent of all defendants' names. There, as here, the

defendant's name appeared nowhere on the summons and, while it appeared in the list of defendants to be served, that was not directed to the defendant. Instead, it was directed to the process server and thus was not part of the summons. We further noted that the summons and the complaint will not be considered in conjunction and that actual knowledge of the action through a flawed summons will not vest the court with jurisdiction.

¶ 26 As we noted in *Arch Bay Holdings*, to avoid confusion, jurisdictional rules are most functional when they are unambiguous and straightforward. Rule 101(a) requires that the summons "shall be directed to each defendant." Ill. S. Ct. R. 101(a) (eff. May 30, 2008). Here, that was not the case, as the summons did not name defendant at all, while the attachment that did name her was directed to the process server. As a result, the summons was invalid, and the court was without jurisdiction.

¶ 27 III. CONCLUSION

¶ 28 The summons was invalid when it failed to include defendant's name on its face. Accordingly, the judgments of the circuit court of Du Page County entered without personal jurisdiction are vacated and the cause is remanded. See *BAC Home Loans Servicing*, 2014 IL 116311, ¶ 45.

¶ 29 Vacated and remanded.