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2015 IL App (3d) 140344-U

Order filed August 6, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

WELLS FARGO BANK, N.A.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-14-0344
)	Circuit No. 12-CH-1275
)	
LORI G. BASILE a/k/a)	
LORI GAIL MacDONNELL-BASILE,)	Honorable
)	Richard J. Siegel,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err when it denied Basile's motion to quash service by publication.
- ¶ 2 Plaintiff, Wells Fargo Bank, N.A., (Wells Fargo) brought a foreclosure action against defendant, Lori G. Basile, the mortgagor and owner of the property encumbered by the mortgage. The trial court denied Basile's motion to quash service by publication, and entered an order of default and judgment for foreclosure and sale. On appeal, Basile argues that the court

erred when it denied her motion to quash service by publication because the motion was filed in accordance with the requirements of the Illinois Mortgage Foreclosure Act. We affirm.

¶ 3

FACTS

¶ 4

On March 11, 2012, Wells Fargo filed a complaint to foreclose Basile's mortgage on property identified as 525 Craig Street, Crete, Illinois. A summons was issued on March 13, 2012, and a process server attested that he attempted to serve Basile at the mortgaged property.

¶ 5

On April 4, 2012, Wells Fargo filed an affidavit to allow service by publication (735 ILCS 5/2-206 (West 2012)). Counsel for Wells Fargo attested that upon diligent inquiry Basile could not be located. A certificate of mailing notice by publication indicated that the notice was mailed to Basile on April 13, 2012, within 10 days of the first publication. In a subsequent affidavit, process server Andrew Hardt attested that he had attempted to serve Basile on March 15, 18, and 20, 2012. On March 15, 2012, a white female answered the door and said that Basile no longer lived at 525 Craig Street. The woman did not provide her name. On March 18, 2012, no one answered the door. On March 20, 2012, Hardt saw no cars in the driveway, received no answer at the door, but noted that the house was in good condition, as if occupied, and the utilities were connected.

¶ 6

On May 18, 2012, a general appearance was filed under Basile's name. The form appeared to bear Basile's signature and listed her name and address. An affidavit of assets and liabilities was filed on the same date and bore Basile's signature.

¶ 7

On January 2, 2013, Wells Fargo filed a motion for entry of an order of default. On January 9, 2013, the cause was called for a hearing on Wells Fargo's motion for default. Basile appeared *pro se* and was given 28 days to file an appearance and responsive pleading. On February 13, 2013, the case was called for a hearing. Basile appeared *pro se* and requested a

continuance. The court granted Basile a 21-day continuance to file an appearance and answer the complaint. On March 4, 2013, Basile entered a *pro se* special and limited appearance, and on March 6, 2013, she appeared before the court with attorney Robert Shearer. The court continued the case to allow Basile to file an appearance and responsive pleading.

¶ 8 On March 20, 2013, Shearer filed a special and additional limited appearance on behalf of Basile, and the court continued the case. On April 3, 2013, Basile filed a motion to quash service by publication. Wells Fargo filed a response that opposed Basile's motion. Thereafter, Basile filed a reply that was supported by two verifications by certification. In the first verification, Basile attested that the only *pro se* appearance she signed and filed was the special and limited appearance that was filed on March 4, 2013. The May 18, 2012, general appearance was signed by Basile's friend, Ron Sales, because she was too sick to appear. In the second verification, Sales attested that he had contacted the clerk's office after Basile received notice of the foreclosure proceedings by mail. The clerk told Sales that an appearance had to be filed by May 18, 2012, or "something bad would happen." Due to the clerk's statements, Sales signed Basile's name to a general appearance and filed it on May 18, 2012.

¶ 9 On July 31, 2013, the court held a hearing on Basile's motion. During the hearing Shearer stated Basile had signed the affidavit of assets and liabilities, which was filed at the same time as the general appearance. Basile stated that in May 2012 she was on three medications, which she was taking incorrectly due to a pharmacy dosage error. This error caused her to have memory problems, and difficulty writing, signing, driving and working.

¶ 10 The court reasoned that because Basile availed herself of the court's jurisdiction for an extension of time, whether it was requested or accepted, was a sufficient appearance to be

subject to personal jurisdiction. The court denied Basile's motion to quash service by publication.

¶ 11 On October 18, 2013, the court entered an order of default and a judgment for foreclosure and sale. Thereafter, the court entered an order confirming sale and an order of possession. Basile filed a notice of appeal.

¶ 12 ANALYSIS

¶ 13 Basile argues that the trial court erred when it denied her motion to quash service by publication because the motion was brought within the appropriate time period, she did not waive her objection to personal jurisdiction, and her substantive arguments justified granting the motion. Because Basile did not file her motion to quash service by publication within 60 days of the January 9, 2013, hearing, we conclude that the trial court did not err.

¶ 14 Our analysis of Basile's arguments requires that we review the trial court's exercise of personal jurisdiction. To enter a valid judgment, a court must have both personal and subject matter jurisdiction. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. A judgment entered without jurisdiction over the parties is void and may be challenged at any time. *Id.* Personal jurisdiction may be established by service of process in accordance with statutory requirements or by a party's voluntary submission to the court's jurisdiction. *Id.* ¶ 18. The date the court exercises personal jurisdiction over a party in a residential foreclosure action is determinative of the beginning of the time period in which the mortgagor can bring a motion to dismiss the proceeding or to quash service of process. 735 ILCS 5/15-1505.6 (West 2012). Section 15-1505.6(a) of the Code of Civil Procedure (Code) requires that a mortgagor bring a motion to dismiss the proceeding or to quash service of process within 60 days of the earlier of these events: (1) the date that the moving party filed an appearance; or (2) the date that the

moving party participated in a hearing without filing an appearance. 735 ILCS 5/15-1505.6(a) (West 2012). We review *de novo* the trial court's denial of Basile's motion to quash service of process. *BAC Home Loans Servicing, LP v. Pieczonka*, 2015 IL App (1st) 133128, ¶ 7.

¶ 15 In the instant case, the trial court denied Basile's motion to quash service by publication because she had participated in the January 9, 2013, hearing. On appeal, the parties dispute whether the January 9, 2013, proceedings constituted a "hearing" under section 15-1505.6(a)(ii) of the Code. 735 ILCS 5/15-1505.6(a)(ii) (West 2012).

¶ 16 Our primary goal in construing the language of a statute is to ascertain and give effect to legislative intent. *Blum v. Koster*, 235 Ill. 2d 21, 44 (2009). The plain and ordinary meaning of the statutory language is the most reliable indicator of legislative intent. *Id.* To determine the plain meaning of statutory terms, we consider the statute in its entirety, the subject it addresses, and the apparent intent of the legislature in enacting it. *Id.* When the statutory language is unambiguous, we must apply it as written, without resort to extrinsic aids of statutory construction. *Id.* Where the statutory language is ambiguous, we may consider other interpretative aids, such as legislative history, to resolve the ambiguity and determine legislative intent. *People v. Whitney*, 188 Ill. 2d 91, 97-98 (1999).

¶ 17 Section 15-1505.6(a)(ii) states that a party to a mortgage foreclosure proceeding has 60 days from "the date that the moving party participated in a hearing" to file a motion to dismiss the proceeding or quash service of process. 735 ILCS 5/15-1505.6(a)(ii) (West 2012). The Code does not specifically define "hearing." Black's Law Dictionary defines "hearing" as a judicial session that is usually open to the public, held for the purpose of deciding issues of fact or law, sometimes with witnesses testifying. Black's Law Dictionary 836 (10th ed. 2014). This definition provides a relatively narrow view of court proceedings that would qualify as a

"hearing" and appears incompatible with the legislative history behind section 15-1505.6.

During the third reading in the Illinois Senate of House Bill 1960—the bill that gave rise to section 15-1505.6—Senator Kirk Dillard explained that the bill

"deals with the time frame of when somebody can bring a motion to quash service in a foreclosure action, and it eliminates the ability to bring that motion late and stall these proceedings. *** [I]t is basically to limit the ability to file these motions to quash service that slow down these actions, and it can happen on either side." 97th Ill. Gen. Assem., Senate Proceedings, May 17, 2011, at 155.

Senator Dillard also stated that House Bill 1960 includes a judicial safeguard in that it vests the court with discretion to waive the 60-day requirement. *Id.* In light of this history, we conclude that the term "hearing" should be construed relatively broadly to encourage parties in a foreclosure proceeding to resolve their jurisdictional issues early or seek a judicial waiver of the 60-day deadline.

¶ 18 Here, Basile appeared before the court, without counsel, on January 9, 2013. This proceeding was called on Wells Fargo's motion for a default judgment. At the conclusion of the proceeding, the cause was continued, and the court granted Basile leave to file a responsive pleading. Under the broad construction of the term "hearing," this proceeding initiated the section 15-1505.6(a)(ii) 60-day clock in which Basile could file a motion to challenge service of process. As a result, Basile had until March 10, 2013, to file her motion to quash service by publication. However, Basile filed her motion to quash service by publication on April 3, 2013, after the 60-day deadline had expired. Therefore, the court did not err in denying Basile's motion to quash service of process.

CONCLUSION

¶ 19 The judgment of the circuit court of Will County is affirmed.

¶ 20 Affirmed.