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2015 IL App (3d) 150196-U

Order filed November 5, 2015

Modified upon denial of rehearing filed December 18, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

UNITED STATES OF AMERICA, acting	)	Appeal from the Circuit Court
through RURAL HOUSING SERVICE or	)	of the 13th Judicial Circuit,
successor agency of UNITED STATES	)	La Salle County, Illinois.
DEPARTMENT OF AGRICULTURE,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	Appeal No. 3-15-0196
	)	Circuit No. 11-CH-362
VICTORIA R. HALSTEAD,	)	
	)	
Defendant-Appellant	)	
	)	
(Standard Bank and Trust Company and Non-	)	
Record Claimants,	)	The Honorable
	)	Eugene P. Daugherity,
Defendants).	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Presiding Justices McDade and Justice Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Trial court properly dismissed case as moot where mortgagee's property was sold to a third party, trial court confirmed the sale, and mortgagee failed to obtain stay of judgment.

¶ 2 Plaintiff, United States of America, acting through Rural Housing Service of United States Department of Agriculture, filed a foreclosure complaint against defendant, Victoria Halstead. Plaintiff filed a motion for summary judgment, which the trial court granted. The property was sold at auction, and the trial court entered an order confirming the sale. Halstead appealed. We reversed the court's summary judgment order. On remand, the trial court dismissed the case, finding that it was moot pursuant to Illinois Supreme Court Rule 305(k) (Ill. S. Ct. R. 305(k) (eff. July 1, 2004)). Halstead appeals, arguing that (1) the court erred in dismissing the case as moot, (2) she was denied due process, (3) she was denied effective assistance of counsel, and (4) the court erred in denying her motion for summary judgment based on lack of subject matter jurisdiction. We affirm.

¶ 3 **FACTS**

¶ 4 In September 2001, Halstead obtained a mortgage in the amount of \$109,750 from plaintiff for a residence located in Marseilles. Six years later, Halstead obtained a second mortgage on the property from Standard Bank and Trust Company in the amount of \$48,285.60.

¶ 5 In May 2008, Halstead applied for a moratorium on payment of her mortgage with plaintiff. Plaintiff granted Halstead a moratorium and renewed it several times. In March 2010, plaintiff notified Halstead that the moratorium was set to expire on May 4, 2010, requiring her to begin making payments on June 4, 2010. Halstead failed to make her scheduled monthly loan payments thereafter.

¶ 6 In September 2011, plaintiff filed a complaint for mortgage foreclosure against Halstead and Standard Bank and Trust Company. The complaint alleged that Halstead owed plaintiff \$138,608.67.

¶ 7 In December 2011, plaintiff filed a motion for immediate possession of real estate. Halstead filed a motion to dismiss, arguing that plaintiff failed to properly serve her with the foreclosure complaint. Halstead also filed an answer to plaintiff's complaint, asserting that she requested an informal discussion with plaintiff after she received plaintiff's notice of acceleration and intent to foreclose in January 2011, but that plaintiff never responded to her request.

¶ 8 In February 2012, plaintiff filed a motion for summary judgment, which the trial court granted. In July 2012, plaintiff filed a motion for confirmation and report of sale showing that Halstead's mortgaged property was sold at auction to the highest bidders, Samuel Mason and Eileen Mason, for \$54,000.

¶ 9 In May 2012, Halstead filed a cross-complaint for conversion against plaintiff. Plaintiff filed a motion to dismiss the cross-complaint, which the trial court granted. Thereafter, Halstead filed a motion for declaratory judgment against plaintiff, which the trial court dismissed.

¶ 10 Halstead also filed a motion to set aside the sale. In support of the motion, Halstead filed an affidavit from her father, Kenneth A. Kennedy, which stated that Kennedy saw Halstead write in big block letters, "I WANT A HEARING!" across the face of a letter on January 7, 2011. Kennedy went with Halstead to the post office. Halstead went in the post office alone but returned with a receipt for a certified letter.

¶ 11 In response to Halstead's motion, plaintiff filed an affidavit from one of its employees, Donna M. Wiltshire. The affidavit stated in part: "According to the record of notes filed at our servicing center and our field office file, Victoria Halstead did not exercise any contacts or appeal rights concerning the acceleration of her account that was completed on December 29, 2010."

¶ 12 On September 14, 2012, the trial court denied Halstead’s motion to set aside the sale of the property and granted plaintiff’s motion for confirmation of sale. The court entered an order confirming the sale of the property that directed the sheriff to execute and deliver a quitclaim deed to the purchasers and stated: “This is a final and appealable Order and there is no just reason to delay enforcement or appeal of this Order.” On October 11, 2012, Halstead filed a motion to reconsider the order confirming the sale. On November 26, 2012, the trial court denied Halstead’s motion to reconsider.

¶ 13 Halstead filed a timely notice of appeal. She appealed the trial court’s orders (1) granting plaintiff summary judgment on its foreclosure complaint, (2) dismissing her cross-complaint, (3) confirming the sale of the property, (4) denying her motion to set aside the sale, (5) dismissing her motion for declaratory judgment, and (6) denying her motion for reconsideration. Halstead never requested a stay of the trial court’s order confirming the sale of the property.

¶ 14 On appeal, we affirmed all of the court’s orders, except its order granting plaintiff summary judgment. *United States v. Halstead*, 2013 IL App (3d) 121054-U, ¶ 39. We reversed that order and remanded for further proceedings, finding that there was a genuine issue of material fact regarding whether Halstead timely sought review of plaintiff’s decision to accelerate her loan. *Id.* ¶¶ 37, 39.

¶ 15 On remand, plaintiff filed a motion for summary judgment, asserting, among other things, that the trial court lacked jurisdiction because the property was sold at a judicial sale to an innocent third party and Halstead never requested a stay of the confirmation order. Attached to plaintiff’s motion were (1) a copy of the sheriff’s deed filed on October 18, 2012, for the property listing the Sheriff of La Salle County as the grantor and Samuel and Eileen Mason as the grantees, (2) an Illinois Real Estate Transfer Declaration for the property, listing the Sheriff

of La Salle County as the seller and Samuel and Eileen Mason as the buyers, and showing a purchase price of \$54,000.

¶ 16 The trial court granted in part plaintiff’s motion for summary judgment and entered an order dismissing the case as moot. Halstead filed a motion to reconsider. The trial court denied the motions but clarified that its dismissal order was based solely on its finding of mootness pursuant to Illinois Supreme Court Rule 305(k). Ill. S. Ct. R. 305(k) (eff. July 1, 2004).

¶ 17 I. Mootness

¶ 18 Halstead argues that the trial court erred in ruling that the case was moot and dismissing it for lack of jurisdiction based on her failure to stay the confirmation order.

¶ 19 An appeal is moot if it involves no actual controversy or the reviewing court cannot grant the complaining party effectual relief. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522-23, (2001). Courts of review will generally not consider moot questions because their jurisdiction is restricted to cases that present an actual controversy. *Id.* at 523. In the absence of a stay, an appeal is moot if the relief sought involves possession or ownership of property that has been conveyed to a third party who is not a party or a nominee of a party to the litigation. *Town of Libertyville v. Moran*, 179 Ill.App.3d 880, 886 (1989).

¶ 20 Illinois Supreme Court Rule 305(k) protects third-party purchasers of property from appellate reversals or modifications of judgments regarding real property, absent a stay of judgment pending the appeal. *Steinbrecher*, 197 Ill. 2d at 523. Supreme Court Rule 305(k) provides:

“If a stay is not perfected within the time for filing the notice of appeal, or within any extension of time granted under subparagraph (c) of this rule, the reversal or modification of the judgment does not affect the right, title, or interest of any person who is not a party

to the action in or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed; nor shall the reversal or modification affect any right of any person who is not a party to the action under or by virtue of any certificate of sale issued pursuant to a sale based on the judgment and before the judgment is stayed. This paragraph applies even if the appellant is a minor or a person under legal disability or under duress at the time the judgment becomes final.” Ill. S. Ct. R. 305(k) (eff. July 1, 2004).

Rule 305(k) applies when: (1) the property passed pursuant to a final judgment; (2) the right, title and interest of the property passed to a person or entity who is not part of the proceeding; and (3) the litigating party failed to perfect a stay of judgment within the time allowed for filing a notice of appeal. *Steinbrecher*, 197 Ill. 2d at 523–24.

¶ 21 A final judgment “decides the controversies between the parties on the merits and fixes their rights, so that, if the judgment is affirmed, nothing remains for the trial court to do but to proceed with its execution.” *In re J.N.*, 91 Ill. 2d 122, 127 (1982). Where multiple parties or claims are involved in the litigation, a court may enter final judgment pursuant to Illinois Supreme Court Rule 304(a) by making “an express written finding that there is no just reason for delaying either enforcement or appeal or both.” Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). “A Rule 304(a) finding renders a judgment final, enforceable, and appealable.” *Steinbrecher*, 197 Ill. 2d at 524. An order containing Rule 304(a) language is final even if a party files a motion to reconsider the order. See *id.* at 522-25.

¶ 22 We now consider whether Rule 305(k) was satisfied here. Halstead argues that the first requirement is not met because the purchasers acquired title on September 17, 2012, before she filed her motion to reconsider the court’s order confirming the sale. She contends that the

judgment did not become final until November 26, 2012, when the trial court denied her motion to reconsider. We disagree.

¶ 23 Here, the trial court confirmed the public sale and entered a Rule 304(a) finding regarding the sale on September 14, 2012. This was a final judgment and satisfies the first element of Rule 305(k). See *id.* at 525. That Halstead later filed a motion to reconsider the order confirming the sale, which the trial court denied, does not render the court's confirmation order a non-final judgment. See *id.* at 522-25.

¶ 24 With respect to the second requirement, Halstead argues that there was insufficient evidence that the purchasers of the property were not a party or nominees of a party to the foreclosure proceeding. Again, we disagree.

¶ 25 Attached to plaintiff's motion for summary judgment were copies of the recorded sheriff's deed and a transfer declaration for the property. These documents show that the Masons purchased the property at the sheriff's sale for \$54,000. These documents are sufficient to satisfy the second element of Rule 305(k). See *Cosmopolitan National Bank of Chicago v. Nunez*, 265 Ill. App. 3d 1012, 1015 (1994).

¶ 26 Finally, as to the third requirement, Halstead does not contest that she failed to perfect a stay of judgment. Although she timely appealed the confirmation order, there is nothing in the record to show that she ever requested a stay of judgment. Thus, the final requirement of Rule 305(k) is met.

¶ 27 Because all of the conditions of Rule 305(k) are satisfied, the trial court properly held that Rule 305(k) renders this action moot.

¶ 28 II. Remaining Claims

¶ 29 Halstead raises several other issues on appeal, arguing that she was denied due process and effective assistance of counsel and that the trial court erred in denying her motion for summary judgment based on lack of subject matter jurisdiction. We have reviewed each of these claims and find that they lack merit.

¶ 30 Specifically, Halstead forfeited review of her due process claim by failing to raise it in the trial court. See *Jacobsen v. Gimbel*, 2013 IL App (2d) 120478, ¶ 34. Further, her due process claim fails because she failed to identify a constitutional right of which she is deprived by Rule 305(k). See *Shamley v. City of Chicago*, 163 Ill. App. 3d 375, 378 (1987). Additionally, Halstead's ineffective assistance of counsel claim fails because, as a civil defendant, she is not entitled to effective assistance of counsel. See *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 829 (2010). Finally, Halstead's claim that the trial court erred in denying her motion for summary judgment based on lack of subject matter jurisdiction is barred by *res judicata* since we considered and rejected that issue in Halstead's first appeal. See *Halstead*, 2013 IL App (3d) 121054-U, ¶ 39.

¶ 31 The judgment of the circuit court of La Salle County is affirmed.

¶ 32 Affirmed.