

NOTICE  
Decision filed 05/29/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 140081-U

NO. 5-14-0081

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

FIRST COLLINSVILLE BANK,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 12-CH-1063
	)	
JERMAINE JOHNSON, a/k/a JEREMY	)	
JOHNSON,	)	
	)	
Defendant-Appellant	)	
	)	Honorable
(Judith Trentman Wilson, Unknown Owners and	)	Stephen P. McGlynn,
Nonrecord Claimants, Defendants).	)	Judge, presiding.

PRESIDING JUSTICE CATES delivered the judgment of the court.  
Justices Stewart and Moore\* concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the defendant was served with an invalid summons, the circuit court was without personal jurisdiction to enter orders against him, and it erred in denying his motions to quash the complaint summons and to vacate the default judgment of foreclosure and the order of sale. In absence of personal jurisdiction, the default judgment of foreclosure and the order

\*Justice Spomer was originally assigned to participate in this case. Justice Moore was substituted on the panel subsequent to Justice Spomer's retirement and has read the brief and listened to the tape of oral argument.

confirming the sale entered against the defendant are void and must be vacated.

¶ 2 The defendant, Jermaine Johnson, appeals from orders of the circuit court denying his motions to quash the complaint summons and to vacate the default judgment of foreclosure and the order confirming sale. Johnson contends that the circuit court did not have personal jurisdiction over him because he was served with an invalid summons, and that in absence of personal jurisdiction, the judgment of foreclosure and the order confirming sale are void and must be vacated. For the reasons that follow, we reverse the order denying the defendant's motion to quash the complaint summons, we vacate the judgment of foreclosure and the order of sale, and we remand the case for further proceedings.

¶ 3 The plaintiff, First Collinsville Bank (Bank), filed a complaint in the circuit court of St. Clair County, seeking foreclosure of the mortgage on real property located in East St. Louis, Illinois (count I), and a deficiency judgment for the amounts due on the promissory note (count II). The Bank named Jermaine Johnson (Johnson), Judith Trentman Wilson (Wilson), and other unknown owners and nonrecord claimants as defendants in the action. The Bank presented the circuit clerk with summonses for the two named defendants and asked the clerk to issue them. The unknown owners and nonrecord claimants were served by publication.

¶ 4 Wilson was personally served with a summons and a copy of the complaint on September 25, 2012. A copy of the summons and the return of service are in the record. The summons is signed, dated, and issued by the deputy circuit clerk. The case number

and the contact information for the plaintiff's attorney appear on the face of the summons. There are two paragraphs of directions printed on the face of the summons. Paragraph A directs named defendants to appear before the court at a specified location and on a specified date to answer the complaint. Paragraph B directs named defendants to file an answer to the complaint within 30 days after service. There is a tick box before each paragraph. The tick box for paragraph B is x-marked on the summons that was served on Wilson.

¶ 5 Jermaine Johnson was living in St. Augustine, Florida, at the time this proceeding was initiated, and he was personally served at his home by a special process server on October 19, 2012. A copy of the summons and the return of service are in the record. The summons that was served on Johnson is not signed, dated, or issued by anyone in the office of the circuit clerk. The contact information for the plaintiff's attorney appears on the face of the summons, but the case number does not. The summons contains two paragraphs of directions, paragraph A directing the named defendant to appear at a specified place and date, and paragraph B directing the named defendant to file an answer within 30 days of service. There is a tick box before each paragraph of directions, but neither is marked.

¶ 6 According to the record, the Bank prepared a motion to amend the complaint on September 28, 2012, and mailed a copy of the motion to Johnson on October 1, 2012. The circuit court granted the Bank's motion to amend on October 4, 2012. On October 22, 2012, the Bank filed an emergency motion for immediate possession of the real property. On that same date, the court found that the property had been abandoned and

granted the Bank's motion for immediate possession. These motions were granted before the summons and original complaint were served on Johnson.

¶ 7 On November 21, 2012, the Bank filed a motion for a default judgment on the amended foreclosure complaint. The Bank alleged that Johnson and Wilson had been served with summons, that more than 30 days had passed since service, and that each defendant was in default, having failed to file an appearance, answer, or responsive pleading. The Bank further alleged that no unknown owners or nonrecord claimants had entered an appearance or answered the complaint. The Bank filed two affidavits with its default motion. An affidavit from the Bank's attorney claimed \$1,670 in attorney fees and \$963 in costs. An affidavit from a principal of the Bank stated that there was a principal balance of \$82,268.04, along with \$3,307.84 in interest and \$197.54 in late charges, owed on the promissory note. On November 29, 2012, the circuit court entered a default judgment of foreclosure on the amended complaint. The court found that the debt owed under the mortgage and note was \$88,406.42, and that Johnson was personally liable for the deficiency. The court ordered that the period for redemption would end on April 6, 2013, and that the property could be sold by auction on or after April 19, 2013.

¶ 8 On November 29, 2012, the Bank requested the circuit clerk to issue a wage deduction summons to Johnson's employer. The summons was issued to the corporate address of Johnson's employer. On December 28, 2012, the employer replied with a handwritten note advising that Johnson had been terminated on December 3, 2012.

¶ 9 On December 6, 2012, the Bank filed a motion to shorten the redemption period, and as grounds, alleged that none of the party-defendants had entered an appearance, that

all party-defendants were in default, and that the court had already found that the subject property had been abandoned. The circuit court granted the Bank's motion and entered an order stating that the redemption period would end on December 29, 2012, and that the foreclosure sale could be held on or after January 3, 2013. The foreclosure auction was called on January 3, 2013, but no one beside the Bank appeared, so it was adjourned until March 1, 2013. On March 5, 2013, the Bank filed a motion for confirmation of the sale to Shirley Davis and Romero Davis for the sum of \$15,001, and a motion for a deficiency judgment in the sum of \$80,464.73. On March 14, 2013, the court entered an order confirming the sale. The order included entry of a deficiency judgment against Johnson in the sum of \$80,464.73.

¶ 10 At the Bank's request, the circuit clerk issued a nonwage garnishment summons for Wachovia Bank, now known as Wells Fargo Bank (Wells Fargo), on May 16, 2013. The summons was served on Wells Fargo, at its headquarters in Jacksonville, Florida, on May 23, 2013. According to the record, Wells Fargo held the sum of \$3,590.39 in a savings account in Johnson's name. On June 7, 2013, the Bank moved for an order directing Wells Fargo to tender \$3,590.39.

¶ 11 On June 13, 2013, Johnson entered a special and limited appearance in the case, and filed a motion to quash service of the complaint summons and service of the nonwage garnishment summons, and a motion to vacate the default judgment and the order confirming sale pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)), on the ground that the circuit court lacked personal jurisdiction over him.

¶ 12 An order entered on October 24, 2013, indicates that Johnson's motions were called for hearing, but there is no transcript or bystander's report of the proceedings in the record. In the order, the court noted that Johnson's motions had been partially argued, that Johnson had been granted leave to file additional memoranda by November 7, 2013, that the Bank had been granted leave to respond by November 14, 2013, and that further arguments were scheduled for hearing on November 20, 2013. Pursuant to a notice file-marked October 29, 2013, the hearing was reset for November 25, 2013.

¶ 13 On October 31, 2013, the court entered an order granting Johnson's motion to quash the nonwage garnishment summons and denying his motion to vacate the judgment of foreclosure and the order confirming the sale. The order was entered even though the court had scheduled additional argument on these issues. Johnson's motion to quash the complaint summons for lack of personal jurisdiction was not addressed in the order. In an order entered on November 25, 2013, the court found that the nonwage garnishment summons issued to Wells Fargo was improper, and it directed Wells Fargo to release any funds held pursuant to the garnishment summons to the owner.

¶ 14 The attorneys for the Bank and for Johnson appeared before the court on December 2, 2013. At that time, the Bank filed a written motion to vacate that portion of the order of October 31, 2013, quashing the nonwage garnishment summons, and both parties made oral motions to reconsider other parts of the order entered on October 31, 2013. Following the hearing, the court entered an order granting the parties leave to file written motions to reconsider, and it scheduled those motions for a hearing on December 23, 2013. The record does not contain a transcript or report of the arguments made

during the hearing on December 2, 2013, but there is no indication that the Bank objected to the order granting additional briefing and argument, or that it challenged the circuit court's jurisdiction of the case.

¶ 15 On December 9, 2013, Johnson filed a supplemental pleading in support of his motions to quash the complaint summons and his motion to vacate the default judgment of foreclosure and the order confirming the sale. On December 23, 2013, the court entered an order indicating that the arguments of the parties were heard and taken under submission. Again, there is no report of the proceedings in the record. In an order entered on February 12, 2014, the court found that Johnson had been effectively served with process and denied his motion to quash service of the summons and complaint. The court stated that the judgment entered on March 14, 2013, remained in "full force and effect," and specifically found that it was final and appealable, and that there was no just cause to delay its enforcement.

¶ 16 On appeal, Johnson contends that the circuit court lacked personal jurisdiction over him because he was served with an invalid summons, and that in absence of personal jurisdiction, the circuit court erred in denying his motion to quash the complaint summons and his motion to vacate the default judgment of foreclosure and the order confirming the sale. Johnson claims that the default judgment of foreclosure and the order confirming the sale are void and must be vacated.

¶ 17 At the outset, we take up the Bank's request for reconsideration of this court's order, entered April 15, 2014, denying its motion to dismiss the appeal for lack of appellate jurisdiction. The Bank contends that this court lacks appellate jurisdiction

because Johnson's notice of appeal was untimely. The Bank argues that the circuit court entered an order on October 31, 2013, in which it denied Johnson's motion to vacate the default judgment of foreclosure and the order confirming the sale, that the order became final when Johnson failed to file a written motion to reconsider within 30 days of its entry, and that Johnson's notice of appeal, filed on February 24, 2014, was untimely. We do not agree.

¶ 18 In this case, Johnson filed a special and limited appearance and motions to quash the complaint summons, to quash a nonwage garnishment summons, and to vacate the default judgment of foreclosure and the order of sale pursuant to section 2-1401 of the Code. Johnson's motions were partially argued on October 24, 2013. The parties were granted leave to file additional memoranda, and the hearing was scheduled to resume on November 25, 2013. The court then entered an order on October 31, 2013, granting Johnson's motion to quash the nonwage garnishment summons, and denying his motion to vacate the judgment of foreclosure and the order of sale. But, the court did not address Johnson's motion to quash the complaint summons, and it did not cancel the additional briefings or the hearing on Johnson's motion to vacate for lack of personal jurisdiction. Thus, the court had yet to address the primary issues raised in Johnson's section 2-1401 motion. The record does not support the Bank's contention that the October 31, 2013, order constituted a final disposition of a portion of the relief sought in Johnson's section 2-1401 motion.

¶ 19 Even if the October 31, 2013, order is deemed to be a final order, the circuit court granted the parties additional time to file their posttrial motions to reconsider. The order



granting the extension was entered within 30 days after the entry of the order of October 31, 2013, and was timely under section 2-1203(a) of the Code. See 735 ILCS 5/2-1203(a) (West 2010) (a party may file a posttrial motion within 30 days after entry of judgment, or within any further time granted by the court, provided that the court enters its order within the 30-day deadline for filing the posttrial motion). Johnson filed his written motion to reconsider before the expiration of the extension, and the circuit court entered a final, appealable order on February 12, 2014. Thus, Johnson's notice of appeal was timely filed on February 24, 2014. Finally, we note that the Bank actively participated, without objection, in the proceedings regarding Johnson's oral and written motions to reconsider the order of October 31, 2013. Even if the circuit court had lost jurisdiction of the case, the Bank's active participation in the proceedings, without objection, revested the court with jurisdiction of the subject matter under the revestment doctrine. See *People v. Kaeding*, 98 Ill. 2d 237, 240-41, 456 N.E.2d 11, 13-14 (1983).

¶ 20 Upon reconsideration, we conclude that Johnson's notice of appeal was timely, and that we have jurisdiction of this appeal. We affirm our previous order denying the Bank's motion to dismiss the appeal for lack of appellate jurisdiction. We now turn to the merits of the appeal.

¶ 21 To enter a valid judgment, the circuit court must have jurisdiction of the subject matter and the parties. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17, 6 N.E.3d 162; *In re Marriage of Verdung*, 126 Ill. 2d 542, 547, 535 N.E.2d 818, 820 (1989). A judgment entered by a court without jurisdiction over the parties is void and may be challenged, directly or collaterally, and vacated at any time. *BAC Home*

*Loans Servicing*, 2014 IL 116311, ¶ 17, 6 N.E.3d 162; *Verdung*, 126 Ill. 2d at 547, 535 N.E.2d at 820.

¶ 22 Personal jurisdiction may be established by either service of process in accordance with the statutory requirements or by a party's voluntary submission to the court's jurisdiction. *BAC Home Loans Servicing*, 2014 IL 116311, ¶ 18, 6 N.E.3d 162. Absent a general appearance, personal jurisdiction can be acquired only by service of process in a manner directed by statute. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308, 497 N.E.2d 1156, 1161 (1986). The objectives of service of process are to protect an individual's right to due process by allowing for proper notification of interested individuals and an opportunity to be heard, and to vest jurisdiction in the trial court. *City of Chicago v. Yellen*, 325 Ill. App. 3d 311, 316, 757 N.E.2d 510, 514 (2001). When a defendant has not been served with process as required by law, the court has no jurisdiction over that defendant and a default judgment entered against him is void. *Yellen*, 325 Ill. App. 3d at 315, 757 N.E.2d at 513. Whether the court obtained personal jurisdiction over a party is a question of law that is reviewed *de novo*. *BAC Home Loans Servicing*, 2014 IL 116311, ¶ 17, 6 N.E.3d 162.

¶ 23 In this case, Johnson contends that the circuit court did not obtain personal jurisdiction over him due to insufficient service of process, and specifically a defective summons. In Illinois, service of process by summons is governed by the Code of Civil Procedure and Illinois Supreme Court Rules. Section 2-201(a) of the Code directs that the clerk of the circuit court shall issue summons upon the request of the plaintiff, and further states that the form and substance of the summons and the service of copies of

pleadings shall be according to rules. 735 ILCS 5/2-201(a) (West 2010). Illinois Supreme Court Rule 101(a) (eff. May 30, 2008) provides that a summons shall be issued under the seal of the court, tested in the name of the clerk, and signed in the clerk's name. Rule 101(a) further provides that the summons 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. Illinois Supreme Court Rule 102(b) (eff. July 1, 1971) provides that in cases where the summons does not require an appearance on a specified date, no summons may be served later than 30 days after its date.

¶ 24 A summons cannot have effect as an order unless it issues from the appropriate court, and the signature and seal of the clerk of court demonstrate that the summons was issued from a court. *Yellen*, 325 Ill. App. 3d at 316, 757 N.E.2d at 514. A summons that is not issued under the seal of the court has no validity and the service of such is without effect. *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 172 Ill. App. 3d 993, 1001, 527 N.E.2d 693, 699 (1988) (citing *Garland v. Britton*, 12 Ill. 232, 233 (1850)). A summons that is not signed by the clerk of the court which issues it is not a summons. *Ohio Millers Mutual Insurance Co. v. Inter-Insurance Exchange of the Illinois Automobile Club*, 367 Ill. 44, 56, 10 N.E.2d 393, 398 (1937); *Yellen*, 325 Ill. App. 3d at 316, 757 N.E.2d at 515. A summons which does not notify the defendant to appear is no summons at all. *Ohio Millers Mutual Insurance*, 367 Ill. at 56, 10 N.E.2d at 398.

¶ 25 In this case, the Bank submitted a summons to the circuit clerk's office on September 10, 2012, requesting that Johnson be served at his address in St. Augustine, Florida. The return of service was filed on October 23, 2012, and indicates that Johnson

was personally served on October 19, 2012. A copy of the purported summons that was served on Johnson was filed with the return of service. The purported summons does not comport with the requirements of Supreme Court Rule 101(a). The document does not contain the signature and seal of the circuit clerk, and it does not identify the date of issuance. Thus, there is no evidence that the document was a valid summons issued from the appropriate court. In addition, the document was not served within 30 days of its date as required in Supreme Court Rule 102(b). Thus, the purported summons had expired before it was served on Johnson. Finally, the document did not apprise Johnson of when and where he needed to appear and defend. Neither one of the tick boxes was marked. The purported summons was not issued in accordance with the procedures set forth in section 2-201(a) of the Code, and the rules set forth in Supreme Court Rule 101(a) and 102. The document was not a summons at all. In this case, Johnson was not served with process in the manner required by the rules and procedures, and he did not voluntarily submit to the jurisdiction of the court. Accordingly, the circuit court did not acquire personal jurisdiction over him.

¶ 26 The Bank argues that section 2-1401(e) of the Code (735 ILCS 5/2-1401(e) (West 2010)) precludes Johnson's attack on the judgment of foreclosure and the order of sale because the property was sold to innocent purchasers and because the jurisdictional defects do not appear on the face of the record.

¶ 27 Under section 2-1401(e), when the rights of an innocent purchaser for value of real or personal property have attached, a judgment cannot be attacked even for alleged jurisdictional defects if those defects do not appear on the face of the record. 735 ILCS

5/2-1401(e) (West 2010). Section 2-1401(e) is intended to protect a *bona fide* purchaser of property, who was not a party to the original action, from the effects of an order setting aside a judgment affecting title to the property when the lack of jurisdiction does not affirmatively appear from the record. *State Bank of Lake Zurich*, 113 Ill. 2d at 312-13, 497 N.E.2d at 1163-64.

¶ 28 In determining whether a lack of jurisdiction is apparent from the record, we look to the record as a whole, including the pleadings, return of process, and the judgment of the court. *State Bank of Lake Zurich*, 113 Ill. 2d at 313, 497 N.E.2d at 1164. It is apparent from the face of the purported summons that was served on Johnson that the document did not contain the date, signature and seal of the circuit clerk's office, and that it failed to apprise Johnson of what he needed to do in order to appear and defend against the complaint for foreclosure. The persons who bid on this property at a judicial sale following a default judgment of foreclosure had constructive notice of facts that would lead a prudent person to review the court record. The jurisdictional defects were evident on the face of the summons and would not require inquiry beyond the record. The Bank has not shown that the buyers were *bona fide* purchasers for value within the meaning of section 2-1401(e), or that Johnson's motion to vacate the judgment is prohibited under section 2-1401(e).

¶ 29 In this case, the record shows that Johnson was not served with process in the legally-required manner. Therefore, the circuit court did not obtain personal jurisdiction over Johnson and any orders entered against him are void. Accordingly, the orders of the circuit court, denying Johnson's motion to quash the complaint summons and his motion

to vacate the judgment of foreclosure and the order confirming the sale, are reversed; the judgment of foreclosure, and the order confirming the sale, including the deficiency judgment against Johnson, are vacated, and the cause is remanded for further proceedings consistent with this decision.

¶ 30 Judgment and order vacated; orders reversed; cause remanded.