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FIFTH DIVISION
March 18, 2016

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BAYVIEW LOAN SERVICING, LLC, a Delaware Limited Liability Company,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 12 CH 17147
)	
WALTER JONES a/k/a WALTER L. JONES, JR., a/k/a WALTER L. JONES,)	
)	
)	
Defendant-Appellant,)	
)	
(Mary Jones, Sure Realty Real Estate Investments, Unknown Owners, and Non-Record Claimants,)	The Honorable
)	Daniel Patrick Brennan,
Defendants.))	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *HELD:* This court lacks jurisdiction to consider *pro se* defendant's appeal from a judgment of foreclosure and sale because it is not a final and appealable order and the circuit court's order does not contain Illinois Supreme Court Rule 304(a) language.

¶ 2 *Pro se* defendant, Walter Jones, appeals the order of the circuit court granting summary judgment and entering a judgment of foreclosure and sale of the subject property in favor of plaintiff, Bayview Loan Servicing, LLC (Bayview). This court lacks jurisdiction to consider defendant's appeal where the order appealed from was not a final and appealable order and the circuit court did not provide language pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). Based on the following, we dismiss the instant appeal.

¶ 3 **FACTS**

¶ 4 On August 30, 2010, defendant executed a promissory note and a mortgage for the subject property on College Avenue in Matteson, Illinois, to M.E.R.S., Inc. (MERS), as nominee for Stearns Lending Inc. MERS subsequently assigned the mortgage to Bank of America, N.A., (Bank of America), the predecessor in interest to plaintiff. Defendant defaulted on the loan in March 2011.

¶ 5 On May 8, 2012, Bank of America filed its complaint for mortgage foreclosure. Defendant filed his *pro se* answer on June 9, 2012, alleging that Bank of America lacked standing to bring the foreclosure complaint because it was not the "holder in due course" of the mortgage. Notwithstanding, on October 17, 2012, Bank of America filed a motion for default against defendant and a motion for judgment for foreclosure and sale, attaching an affidavit of prove-up thereto. The circuit court provided defendant time to answer or otherwise plead. In addition, the court denied defendant's verified emergency motion to dismiss or alternatively to stay foreclosure proceedings.¹ Then, on January 7, 2013, the circuit court entered an order withdrawing plaintiff's motion for default judgment. Defendant subsequently filed a motion to dismiss the foreclosure complaint, alleging Bank of America violated section 2-602 of the Code

¹ The precise date of the order is unreadable; the order additionally provided that defendant's motion was unfiled, but noticed and verified.

of Civil Procedure (Code) (735 ILCS 5/2-602 (West 2010)) wherein it failed to reply to defendant's affirmative defense presented in his June 19, 2012, answer and its counsel did not file the proper procedure for withdrawing as the attorney of record.

¶ 6 On June 19, 2014, Bank of America filed a reply to defendant's affirmative defense, as well as a motion for summary judgment, a motion for judgment for foreclosure and sale, and a motion to substitute party plaintiff. In the motion to substitute party plaintiff, Bank of America provided that Bayview had been assigned the subject mortgage. Defendant was provided time to respond to the motion for summary judgment. No response appears in the record. On December 10, 2014, the circuit court granted the request to substitute Bayview as party plaintiff. In addition, on December 10, 2014, the court granted summary judgment in favor of Bayview and entered a judgment of foreclosure and sale against defendant. The December 10, 2014, order did not contain Rule 304(a) language. On December 31, 2014, defendant filed his *pro se* notice of appeal requesting the reversal of the circuit court's December 10, 2014, order.

¶ 7

ANALYSIS

¶ 8 Defendant contends the circuit court erred in granting summary judgment in favor of Bayview where Bank of America failed to file a reply to his affirmative defense alleging it lacked standing to foreclose on the subject mortgage in violation of section 2-602 of the Code, where Bank of America's counsel failed to follow the proper procedure for withdrawing as the attorney of record, and where Bank of America preemptively filed its motion for summary judgment. Plaintiff responds that this court lacks jurisdiction to consider the merits of defendant's arguments.

¶ 9 Pursuant to the Illinois Constitution, this court has jurisdiction to hear appeals from all final judgments entered by the circuit court. *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419,

¶ 9. The Illinois Constitution additionally grants this court the right to " 'provide by rule for appeals to the Appellate Court from other final judgments.' " *Id.* (quoting Ill. Const. 1970, art. VI, § 6). As a result, absent a supreme court rule providing such jurisdiction, this court lacks jurisdiction to review judgments, orders, or decrees which are not final. *Id.*

¶ 10 Our courts have been clear that a judgment ordering the foreclosure of a mortgage is not final and appealable until the circuit court enters an order approving the sale of the subject property and directing its distribution. *Id.* at ¶ 11. The supreme court reasoned:

"such a judgment is not final and appealable *** because it does not dispose of all issues between the parties and it does not terminate the litigation. [Citations.]

Specifically, although a judgment of foreclosure is final as to the matters it adjudicates, a judgment foreclosing a mortgage, or a lien, determines fewer than all the rights and liabilities in issue because the trial court has still to enter a subsequent order approving the foreclosure sale and directing distribution. [Citations.] Accordingly, it is the order confirming the sale, rather than the judgment of foreclosure, that operates as the final and appealable order in a foreclosure case." *Id.*

¶ 11 In this case, because the order defendant appealed from, namely, the judgment ordering the foreclosure of the mortgage, was not final *and* appealable, the addition of Rule 304(a) language was necessary to confer appellate jurisdiction. *In re Marriage of Verdung*, 126 Ill. 2d 542, 555 (1989) (an order of foreclosure and sale is not appealable unless it includes Rule 304(a) language). No such language appeared in the circuit court's December 10, 2014, order granting summary judgment and entering judgment of the foreclosure and sale of the subject property. We, therefore, lack jurisdiction to consider defendant's appeal. Accordingly, the appeal must be dismissed. See *In re Marriage of Baumgartner*, 2014 IL App (1st) 120552, ¶ 33.

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¶ 12

CONCLUSION

¶ 13 Because we lack jurisdiction, we must dismiss the underlying appeal.

¶ 14 Dismissed.