

No. 15-1856

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE BANK OF NEW YORK AS TRUSTEE,)	Appeal from the Circuit Court
FOR THE CERTIFICATE HOLDERS)	of Cook County.
CWABS, INC. ASSET-BACKED)	
CERTIFICATES, SERIES 2006-23)	
)	
Plaintiff-Appellee,)	
)	
v.)	No. 2007 CH 24080
)	
YVONNE EDWARDS A/K/A/ YVONNE)	
RICHARDS; MANNIX RICHARDS)	
)	Honorable Allen P. Walker
Defendants-Appellants.)	Judge Presiding

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly confirmed the judicial sale of the property because defendants did not prove by a preponderance of the evidence that they applied for assistance under the Home Affordable Modification Program (HAMP).

¶ 2 This case involves a residential mortgage foreclosure action and judicial sale instituted by plaintiff Bank of New York (the Bank) against defendants Yvonne Edwards and Mannix Richards. Defendants appeal the circuit court's order confirming the judicial sale arguing that

they had a pending HAMP application when the judgment confirming the judicial sale was entered. For the following reasons, we affirm the circuit court's judgment.

¶ 3

BACKGROUND

¶ 4 The Bank filed a foreclosure complaint against defendants on August 31, 2007 after they stopped making mortgage payments on the property commonly known as 19900 Margaret Court, Lynwood, Illinois 60411. A default judgment and a judgment of foreclosure and sale were initially entered in favor of the Bank on April 30, 2008. On September 2, 2014, the court entered an order staying the judicial foreclosure sale until further order of the court. The judicial foreclosure sale took place on September 25, 2014. On September 30, 2014, the Bank filed a motion to confirm the judicial foreclosure sale. On January 13, 2015, defendants filed a document titled "The Defendant's Opposition to Confirm Judicial Sale."

¶ 5 On March 18, 2015, the court advised the parties that it would not consider the motion until the Bank reviewed defendants' loan modification efforts. Eventually, after a hearing which took place on June 3, 2015, the court confirmed the judicial sale on June 22, 2015. This appeal followed.

¶ 6

ANALYSIS

¶ 7 On appeal, defendants, proceeding *pro se*, claim that the circuit court should have set aside the foreclosure sale because they applied for assistance under the Making Home Affordable Program (MHAP) or under the Home Affordable Modification Program (HAMP), which is a component of the MHAP. See *Citimortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 64. As a result, they argue that the trial court erred by not setting aside the judicial sale pursuant to section 15-1508(d-5) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(d-5) (West 2012)). Section 15-1508(d-5) creates a state law remedy

for borrowers whose property has been sold at a foreclosure sale in violation of the federal requirement that the sale be suspended during the pendency of a HAMP modification application. That section requires a court to set aside such a sale if:

“at any time prior to the confirmation of the sale, if the mortgagor proves by a preponderance of the evidence that (i) the mortgagor has applied for assistance under the Making Home Affordable Program established by the United States Department of the Treasury pursuant to the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009, and (ii) the mortgaged real estate was sold in material violation of the program's requirements for proceeding to a judicial sale.” 735 ILCS 5/15-1508(d-5) (West 2012).

¶ 8 We review a trial court's decision to confirm a judicial foreclosure sale for an abuse of discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008). An abuse of discretion occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court. *Seymour v. Collins*, 2015 IL 118432, ¶ 41. We can affirm the judgment below on any reason supported by the record, whether or not the trial court relied on that particular reason. *Steiner Electric Co. v. Maniscalco*, 2016 IL App (1st) 132023, ¶ 49.

¶ 9 In *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 64, this court provided an exhaustive analysis of HAMP rules and section 15-1508(d-5) of the Foreclosure Law. Looking to the plain meaning of the words "applied" and "assistance," the *Bermudez* court determined that "'applied for assistance under MHAP' [meant] to formally apply, usually in writing, for help pursuant to the procedures set forth by HAMP, a component of MHAP." *Id.* ¶¶

63-64. Recognizing that the legislature specifically referenced MHAP, the court noted that the HAMP guidelines and bulletins did not set forth procedures to "apply" for assistance. *Id.* ¶ 66. Still, given that the first step in the loan modification process was that borrowers had to be "eligible" and have their income "verified," the court concluded that in order to apply for assistance pursuant to section 15-1508(d-5), the borrower had to submit the documentation required by the servicer to determine the borrower's eligibility and verify his or her income. *Id.* The court then listed the documentation the borrower needed to submit to determine eligibility and income, as provided by the HAMP guidelines and bulletins. *Id.*

¶ 10 The court rejected the defendants' contention that they fulfilled the requirements of section 15-1508(d-5) on several bases, including that the self-employed defendant failed to submit "the most recent quarterly or year-to-date profit/loss statement," a document required by HAMP rules. *Id.* The *Bermudez* court also found that the defendants' submissions were faulty because they were "not sworn copies" and thus not properly authenticated. *Id.* ¶ 68. Because the defendants in *Bermudez* failed to submit the required documentation to the servicer, the court concluded that they did not prove by a preponderance of the evidence that they applied for assistance under HAMP. *Id.* ¶¶ 67, 69.

¶ 11 This case parallels *Bermudez*. Here, just as in *Bermudez*, defendants failed to prove by a preponderance of the evidence that they submitted a complete HAMP loan modification application. The package materials attached to defendants' motion in opposition of the confirmation of sale consisted of eight letters from the Bank, a lease agreement and two other documents that list the property at issue as mailing address but do not reference defendants' names. None of the documents attached to defendants' motion were sworn or certified copies, nor were they properly authenticated via an affidavit. Their submissions did not contain any

proof of income, something that is crucial to any loan application. Moreover, nowhere in their motion or the exhibits did defendants state that a completed loan modification package was submitted. Because of the lack of income verification, authentication, and foundation of the materials submitted in support of defendants' HAMP-related motion, we cannot say that the circuit court abused its discretion by refusing to set aside the sale based on a pending HAMP modification application. See *Bermudez*, 2014 IL App (1st) 122824 at ¶ 68.

¶ 12 Furthermore, no record of proceedings or bystander's report was provided on appeal. It is the duty of the appellant to present this court with a sufficiently complete record of the trial court proceedings to support his claims of error. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003). "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). Therefore, when the issue on appeal relates to the conduct of a hearing or proceeding, the absence of a transcript or other record of that proceeding means this court must presume the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Rogers*, 204 Ill. 2d at 319. Based on this record, we cannot say the trial court abused its discretion in denying defendants' motion confirming the sale of the property.

¶ 13

CONCLUSION

¶ 14 Based on the foregoing, we affirm the circuit court's judgment.

¶ 15 Affirmed.