2016 IL App (2d) 150161-U
No. 2-15-0161
Rule 23 Order filed February 17, 2016
Modified upon denial of rehearing June 2, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ROBERT A. SEIDEL, *et al.*,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 07-CH-2596
	)	
RESIDENTIAL FUNDING CO., LLC f/k/a Residential Funding Corp. as Trustee, Series #2004NWH2, Pool #3744,	)	
	)	
Defendant-Appellee,	)	
	)	
and	)	
	)	
JEFFREY S. KONZ, *et al.*,	)	Honorable
	)	Mitchell L. Hoffman,
Intervenors.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in allowing intervening current titleholders to move to dismiss plaintiffs' petition for relief from judgment, and petition failed to state a claim that trial court's earlier foreclosure and confirmation orders were void due to its purported lack of jurisdiction based on the foreclosing party's alleged lack of standing or due to alleged fraud by foreclosing party in procuring those orders.

¶ 2 I. INTRODUCTION

¶ 3 Plaintiffs, Robert A. Seidel, *et al.*, appeal an order of the circuit court of Lake County dismissing their petition for relief from judgment (735 ILCS 5/2-1401 (West 2014)) in accordance with section 2-615 of the Civil Practice Law (735 ILCS 5/2-615 (West 2014)) on the motion of intervenors, Jeffrey S. Konz, *et al.* For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 In an earlier action, Residential Funding Company foreclosed a mortgage upon a property owned by plaintiffs, Robert and Marsha Seidel. The Seidels appealed the order of foreclosure and sale as well as the confirmation order, and this court affirmed. See *Residential Funding Co. v. Seidel*, No. 2-09-0496 (January 11, 2010) (unpublished order under Illinois Supreme Court Rule 23). The Seidels—now plaintiffs in this matter—have filed a petition for relief from judgment. 735 ILCS 5/2-1401 (West 2014). In it, they contend that the judgment in the earlier case is void as the trial court purportedly lacked subject matter jurisdiction and because the judgment was allegedly procured through fraud.

¶ 6 Plaintiffs allege that Residential Funding Company did not hold the mortgage at the time of the foreclosure in the earlier action. They contend that the purported assignment of the mortgage and associated note to Residential Funding Company was fraudulent. In support, based upon representations of attorneys who replaced Residential Funding Company's initial attorneys but then moved to void their appearance or withdraw, plaintiffs assert that an entity known as Silvergate Bank was the actual holder of the mortgage.

¶ 7 Plaintiffs also allege that a fraud "had been perpetuated upon them and thousands, if not millions, of Americans across the country." They claim that the practice of "robo-signing" had been used in the course of their foreclosure. They explain, "Robo-signing has been described as

'a robotic process of the mass production of false and forged execution of mortgage assignments, satisfactions, affidavits and other legal documents related to mortgage foreclosures and legal matters being created by persons without personal knowledge of the facts being attested to. See *Peterson v. Carrington Mort[gage] Services. LLC*[, No. H035188] (Cal. App. [Dec. 28] 2011)." Plaintiffs contend that the assignment of their mortgage and note to Residential Funding Company was performed by an individual who admitted he routinely signed such documents while having no personal knowledge of their contents. They allege the same is true of an affidavit submitted in support of Residential Funding Company's motion for summary judgment in the foreclosure case.

¶ 8 Residential Funding Company's original attorneys appeared to object to its new attorney's motion to void their substitution as counsel because the former attorneys did not want to be ordered back into the case. Plaintiffs sought a default judgment. Residential Funding Company is apparently no longer actively involved in this matter. The Konzes, who had purchased the subject property, then intervened and moved to dismiss plaintiffs' petition for relief from judgment. The trial court granted that motion, and this appeal followed.

¶ 9 III. ANALYSIS

¶ 10 On appeal, plaintiffs raise two main issues. First, they contest the propriety of the intervenors' entering the case and filing a motion to dismiss. In their reply brief, they concede that the intervention itself was proper, as the intervenors have an arguable right that could be affected by the outcome of the instant action. However, they contend that it was improper to allow them to file a motion to dismiss, essentially on Residential Funding Company's behalf. Second, they contend that their petition was sufficient to survive a section 2-615 motion to dismiss.

¶ 11 A. The Intervention

¶ 12 Though plaintiffs do not dispute that there "may be a valid purpose to allow intervention," they argue that it was improper for the trial court to allow the intervenors to file a motion to dismiss. In support, they cite only a passage from Corpus Juris Secundum, which states "a person cannot be allowed to intervene for the mere purpose *** of moving to dismiss." 67A C.J.S. *Parties* § 91 (2015). In support, Corpus Juris Secundum cites nothing but a Minnesota case from near the turn of the nineteenth century. See *Hunt v. O'Leary*, 84 Minn. 200, 202 (1901). The Minnesota Supreme Court set forth its rationale thusly, "If that were permissible, an intruder could easily control litigation of no real interest to him." *Id.* Here, of course, as the Konzes are the current title holders of the property at issue, it cannot be said that this litigation is of "no real interest" to them. Accordingly, the concern that motivated the Minnesota court is not present here, and *Hunt* is therefore inapposite.

¶ 13 Indeed, we perceive no sound reason to preclude intervenors from moving to dismiss, and plaintiffs do not identify one. Plaintiffs assert that intervenors' interests are equitable in nature and that the question of whether the trial court's orders in the original action are void is not affected by equitable considerations. See *Rockford Financial Systems, Inc. v. Borgetti*, 403 Ill. App. 3d 321, 327 (2010). While this may be true, it certainly does not mean that plaintiffs should be excused from stating a proper case. Moreover, it does not follow that intervenors may not protect their interest, whatever its nature, by pointing out a legal deficiency in plaintiffs' case; the expeditious handling of such matters through a motion to dismiss conserves scarce judicial resources (*In re Marriage of Schlam*, 271 Ill. App. 3d 788, 797 (1995)).

¶ 14 Plaintiffs further argue, "[I]f the foreclosure decree is void, then [intervenors'] arguments concerning how they will be affected by such a ruling are irrelevant and may not prevent the

vacating of the foreclosure decree." This is undoubtedly true; however, this proposition is premised on the foreclosure decree being void. Intervenors' motion to dismiss contends that plaintiffs have not stated a case that the decree is void; it does not assert that the petition should be dismissed for some equitable reason. The equitable nature of intervenors' interest is quite irrelevant to the question of whether plaintiffs have set forth facts and law which would entitle them to prevail on their petition for relief from judgment. As such, we see nothing improper about intervenors being permitted to bring the motion to dismiss. In any event, plaintiffs have not carried their burden on appeal (see *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1173 (2008)) of showing that this was error.

¶ 15 B. The Motion to Dismiss

¶ 16 We now turn to the question of whether plaintiffs stated a claim that the trial court's orders in the earlier action are void. Plaintiffs advance two bases in support of their claims. First, they contend that Residential Funding Company lacked standing to institute the foreclosure. Second, they contend that the orders were procured through fraud.

¶ 17 Regarding standing, we note that lack of standing is not a basis upon which a judgment or order can be deemed void. In *Lyons v. Ryan*, 324 Ill. App. 3d 1094, 1102 n.5 (2002), the First District explained:

> "The standing issue here is both jurisdictional and constitutional in nature. This court, in ruling that a party has waived the issue of standing, has occasionally stated that standing is not jurisdictional, but is an affirmative defense. *E.g. Contract Development Corp. v. Beck*, 225 Ill. App. 3d 660, 664 (1994). However, the fact that standing is an affirmative defense under section 2-619 does not preclude it from being jurisdictional. After all, lack of subject matter jurisdiction is a ground for dismissal under section 2–619. [Citation.]

> Nevertheless, the ruling in *Beck* (and similar cases) that standing can be waived is correct. Parties cannot waive an issue of subject matter jurisdiction. [Citation.] However, other jurisdictional issues can be waived. [Citations.] Standing is one such issue. [Citation.] Presumably, this is because the essence of the standing inquiry is not the subject matter *per se,* but whether a litigant, either in an individual or representative capacity, is entitled to have the court decide the merits of a particular dispute or issue. [Citation.]" *Id.*

In other words, lack of standing does not go to the authority of a court to adjudicate a dispute.

¶ 18 Subsequently, this court stated, in *Nationstar Mortgage, LLC v. Canale*, 2014 IL App (2d) 130676, ¶ 15, as follows:

> "A different outcome is not required by the fact that the purported defect in plaintiff's claim was plaintiff's failure to plead its standing. To be sure, the supreme court has stated that standing is 'an element of justiciability.' *People v. Greco,* 204 Ill. 2d 400, 409 (2003). This is not to say, however, that a plaintiff who lacks standing cannot assert a 'justiciable matter.' Indeed, if such were the case, the plaintiff's lack of standing would itself defeat the trial court's subject matter jurisdiction, and the defendant could not forfeit the lack of standing. *Cf. Lebron v. Gottlieb Memorial Hospital,* 237 Ill. 2d 217, 252-53 (2010). Thus, though standing might be 'an element of justiciability' (*Greco,* 204 Ill. 2d at 409), it is not a requirement for a 'justiciable matter.' "

Canale states what is plainly true: since standing may be waived, it cannot be an element of a court's subject matter jurisdiction. Rather, regarding subject matter jurisdiction, "the *only* consideration is whether the alleged claim falls within the general class of cases that the court

has the inherent power to hear and determine." and "[i]f it does, then subject matter jurisdiction is present." (Emphasis in original.) *In re Luis R.*, 239 Ill. 2d 295, 301 (2010).

¶ 19 If standing is not a component of jurisdiction, a party's lack of standing does not result in an order being void. See *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 32 ("[W]hether a judgment is void in a civil lawsuit that does not involve an administrative tribunal or administrative review depends solely on whether the circuit court which entered the challenged judgment possessed jurisdiction over the parties and the subject matter."). Accordingly, to the extent plaintiffs rely on Residential Funding Company's purported lack of standing in their 2-1401 petition, it does not state a claim that the trial court's earlier orders are void.

¶ 20 Before leaving this issue, we note plaintiffs' reliance on three cases that provide some support for their arguments. See *In re Estate of Wellman*, 174 Ill. 2d 335 (1996); *Helmig v. John F. Kennedy Community Consolidated School District No. 129*, 241 Ill. App. 3d 653 (1993); *In re Custody of McCuan*, 176 Ill. App. 3d 421 (1988). *Helmig*, 241 Ill. App. 3d at 658, does, in fact, state "standing of a litigant is one of the components of the court's subject matter jurisdiction." *Wellman*, 174 Ill. 2d at 344, states that it is a "component of justiciability." *McCuan*, 176 Ill. App. 3d at 435-27, concerns standing to proceed under a statute in accordance with a statutory condition identifying who may do so rather than addressing standing in the usual sense the term is used (as we are using it in this case). As such, *McCuan* provides little guidance here. As for the other cases, we do not see how they can be read to mean a party's lack of standing limits the authority of the court to decide a class of cases in light of the supreme court's pronouncement in *Luis R.*, 239 Ill. 2d at 301, that "the *only* consideration is whether the alleged claim falls within the general class of cases that the court has the inherent power to hear and determine."

¶ 21 Plaintiffs also contend that the trial court's orders in the foreclosure case are void because they were procured by fraud. Plaintiffs assert that "[s]chemes to defraud a court relative to subject matter jurisdiction, personal jurisdiction, colorable jurisdiction, inherent authority, or colorable authority carried on through false testimony, affidavits, and the like on the one hand and concealment of relevant facts on the other render judgments procured as the result of such scheme [*sic*] void *ab initio*." Plaintiffs are partially correct.

¶ 22 Not all fraud upon a court results in a void judgment. *Settlement Funding, LLC v. Brenston*, 2013 IL App (4th) 120869, ¶ 32. Rather, "[c]ourts have distinguished between fraud that prevents a court from acquiring jurisdiction or merely provides colorable jurisdiction and fraud that occurs after the court's valid acquisition of jurisdiction, such as through false testimony or concealment." *Id*. Only fraud that prevents a court from acquiring jurisdiction results in a void judgment. *Id*. The fraud plaintiffs allege in this case is not the sort that would prevent a court from acquiring jurisdiction. Quite simply, plaintiffs contend that Residential Funding Company established standing through a fraudulent assignment. As explained above, lack of standing does not affect subject matter jurisdiction. Plaintiffs attempt to elevate Residential Funding Company's alleged lack of standing to a basis to void the trial court's earlier orders by contending that it was established through fraud is nothing more than mere bootstrapping.

¶ 23 Plaintiffs contend that *Settlement Funding, LLC*, 2013 IL App (4th) 120869, supports their position. They note that the fraud in that case caused the trial court to enter an order in excess of its statutory authority. While this may have been a basis to find the trial court's actions void in the past, this argument is no longer tenable in light of recent developments in the law. In *People v. Castleberry*, 2015 IL 116916, ¶ 15, our supreme court explained that the concept of

inherent authority is only applicable in the administrative realm or when a court of limited jurisdiction is involved, and "has no place in civil actions in the circuit courts, since these courts are granted general jurisdictional authority by the constitution." Noting that a court of general jurisdiction need not look to the legislature for its jurisdictional authority, the supreme court held that a disposition was not void even though it did not comply with the range of possible dispositions established by the legislature. Thus, to the extent that *Settlement Funding, LLC*, 2013 IL App (4th) 120869 ¶ 37-38, held that the trial court's orders were void because it lacked statutory authority to enter them, it is inconsistent with the supreme court's holding in *Castleberry*.

¶ 24 Plaintiff's also cite *Bank of America, N.A. v. Adeyiga*, 2014 IL App (1st) 131252, ¶ 78-80, in which the First District intimated that fraud in establishing standing would result in a void judgment. However, the First District found that plaintiff's failed to set forth facts from which fraud could be proven. *Id*. at 82. Thus, the First District was not required to squarely address the issue of whether such fraud would deprive the trial court of jurisdiction. Indeed, it did not even mention the proposition that only certain types of fraud lead to a void order. See *Settlement Funding, LLC*, 2013 IL App (4th) 120869, ¶ 32. As we explain above, standing, and fraud pertaining to standing, does not affect a trial court's subject matter jurisdiction. *Bank of America* does not convince us otherwise.

¶ 25 Finally, plaintiffs cite *In re Adoption of E.L.*, 315 Ill. App. 3d 137 (2000). In that case, the biological father of a child was given no notice of adoption proceedings and his existence was concealed from the trial court. The *E.L.* court acknowledged that not all judgments procured by fraud are void; however, where the fraud resulted in a party being kept away from the court, it was the type of fraud that resulted in a void judgment. *Id*. at 154. Conversely, the alleged fraud

in this case was not of this type—no one was kept away from court—and it therefore did not result in a void judgment, as explained above. Hence, *E.L.* is inapposite.

¶ 26 Accordingly, plaintiffs' petition does not state a claim that the trial court's earlier orders are void due to fraud.

¶ 27 IV. CONCLUSION

¶ 28 In light of the foregoing, the judgment of the circuit court of Lake County is affirmed.

¶ 29 Affirmed.

¶ 30 **SUPPLEMENTAL ORDER ON DENIAL OF REHEARING**

¶ 31 We caution petitioners about the contumacious tone of their petition for rehearing. After accusing us of engaging in "legal legerdemain" and a "calculated distortion of the issues," petitioners attempt to set forth a dichotomy between standing—which they characterize as a "mere procedural tool independent of greater substantive doctrines with which it invariably becomes connected"—and the concept of the "real party in interest"—which they claim is "the harbinger of subject matter jurisdiction." They do so in an attempt to avoid the effect of cases that stand for the proposition that standing is not the sort of jurisdictional defect that results in a court's act being void. See *In re Luis R.*, 239 Ill. 2d 295, 301 (2010); *Nationstar Mortgage, LLC v. Canale*, 2014 IL App (2d) 130676, ¶ 15 ("Thus, though standing might be 'an element of justiciability' (*Greco,* 204 Ill. 2d at 409), it is not a requirement for a 'justiciable matter.' "); *Lyons v. Ryan*, 324 Ill. App. 3d 1094, 1102 n.5 (2002) ("Parties cannot waive an issue of subject matter jurisdiction. [Citation.] However, other jurisdictional issues can be waived. [Citations.] Standing is one such issue."). Moreover, petitioners cite no case that draws a similar distinction between these two purportedly separate concepts. Indeed, our research reveals authority to the contrary. In *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999), our supreme court stated:

"The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit. The doctrine assures that issues are raised only by those parties with a real interest in the outcome of the controversy." As indicated, these are not independent concepts. As the supreme court explained, a party with standing *is* the real party in interest. Petitioners' attempt to draw a distinction between the two concepts fails to persuade.

¶ 32 While much of petitioners' petition for rehearing consists of reargument or is otherwise unpersuasive, we will comment briefly on a few issues. First, petitioners cite a case that was decided after they filed their final brief in this appeal, namely, *Trzop v. Hudson*, 2015 IL App (1st) 150419. Petitioners point out that in *Trzop*, it was held that an intervenor lacked standing to file a motion to dismiss the original plaintiff's complaint. *Id*. ¶ 77. However, *Trzop* is easily distinguishable. The *Trzop* court's holding regarding the intervenor lacking standing concerned two counts of a complaint seeking monetary damages in tort against a party other than the intervenor. *Id*. ¶ 75. The court expressly noted that "an award of monetary damages against [the other party] will not affect [the intervenor's] property interest." *Id*. ¶ 76. This is not the case here, so *Trzop* provides us with no meaningful guidance.

¶ 33 Second, petitioners criticize our unwillingness to follow a passage from Corpus Juris Secundum which relied on a 115-year-old case from Minnesota. See *Hunt v. O'Leary*, 84 Minn. 200, 202 (1901). Petitioners mischaracterize our decision, stating that we found *Hunt* to be "factually inapposite." However, we found *Hunt* inapposite in that the policy considerations that the *Hunt* court cited were not present in the instant case. The court expressly reasoned, "If that were permissible, an intruder could easily control litigation of no real interest to him." *Id*. That concern is not present here, as the Konzes (the purchasers and intervenors) undeniably have a real interest at stake. Petitioners contend that the Minnesota court was not motivated by "some

meaningless language about an intruder." As we read it, that purportedly "meaningless language" appears to be the salient point of the case (in fact, we do not see what other concern could have motivated the *Hunt* court).

¶ 34 Finally, we note that this is the fourth time petitioners have advanced what is essentially the same argument, specifically, that Residential Funding Company's alleged lack of standing somehow results in the trial court's judgment of foreclosure being void *ab initio*. We rejected this argument in *Residential Funding v. Seidel*, No. 2-09-0496 (January 11, 2010) (unpublished order under Illinois Supreme Court Rule 23 (eff. May 30, 2008), and petitioners raised it again in a petition for rehearing in that case. They now raise essentially the same argument here, both in the original appeal and in the petition for rehearing. Thus, we find it necessary to state again a lack of standing is not the sort of defect that renders a subsequent judgment void. See, *e.g.*, *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 253-54 (2010) ("Because *issues of standing and ripeness do not implicate this court's subject matter jurisdiction*, and because the only party who raised these issues below has abandoned them on review, we decline to address these issues on the merits." (Emphasis added.)); *Nationstar Mortgage, LLC v. Canale*, 2014 IL App (2d) 130676, ¶ 15; *cf. Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 494 (1988) ("Even in the Federal courts [as opposed to Illinois courts], where lack of article III (U.S. Const., art. III) standing is a bar to jurisdiction, it has been noted that controversies regarding standing are best resolved by motions for summary judgment rather than motions for judgment on the pleadings."). Moreover, we find petitioners' attempts to distinguish cases that hold that standing is not a component of justiciability (such as *In re Luis R.*, 239 Ill. 2d 295, 301 (2010)) unpersuasive.

¶ 35 In light of the foregoing, petitioners' petition for rehearing is denied.