

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
SECOND DISTRICT

WELLS FARGO BANK, N.A.,)	Appeal from the Circuit Court
)	of Winnebago County.
Plaintiff-Appellee,)	
)	
v.)	No. 14-CH-269
)	
MARGARET KING, GARY KING,)	
SPRINGLEAF FINANCIAL SERVICES)	
OF ILLINOIS, INC., CAPITAL ONE BANK)	
(USA), N.A., UNKNOWN OWNERS, and)	
NONRECORD CLAIMANTS,)	
)	
Defendants)	Honorable
)	J. Edward Prochaska,
(Greg Fitzgerald, Intervenor-Appellant).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* We dismissed intervenor’s appeal as moot: the challenged action had expired, and the capable-of-repetition exception did not apply where the record did not show a likelihood that intervenor would be subjected to it again.
- ¶ 2 Intervenor, Greg Fitzgerald, appeals the trial court’s order that awarded him possession, after 60 days, of a home that he purchased at a foreclosure sale. Fitzgerald contends that the

relevant statute provides that a purchaser shall be entitled to possession after 30 days, leaving the trial court with no discretion to extend the period. We dismiss the appeal as moot.

¶ 3 Plaintiff, Wells Fargo Bank, N.A., filed a foreclosure action against defendants, Gary and Margaret King and others. The Kings were eventually defaulted and the court entered a judgment of foreclosure and sale. A foreclosure sale was held on June 15, 2015, and Fitzgerald was the successful bidder.

¶ 4 The trial court confirmed the sale on August 12, 2015. Paragraph 4 of the court's findings stated that "GREG FITZGERALD, INC., *** is entitled to possession of the subject property as of the date thirty (30) days after the entry of this order." However, in the decretal portion of the order, which provided that Fitzgerald "be granted an order of possession of the subject property effective thirty (30) days from the date of this Order," all references to 30 days were crossed out and "60" was handwritten underneath.

¶ 5 Fitzgerald filed a petition to intervene and a postjudgment motion seeking to modify the order to give him possession after 30 days. The trial court allowed Fitzgerald to intervene, but denied the postjudgment motion. Fitzgerald timely appeals.

¶ 6 On appeal, Fitzgerald contends that the trial court's order awarding possession after 60 days contravenes the relevant statute, which provides that a purchaser at a foreclosure sale shall be entitled to possession after 30 days.

¶ 7 The Illinois Mortgage Foreclosure Law (the foreclosure law) provides that an order confirming a foreclosure sale "shall include, notwithstanding any previous orders awarding possession during the pendency of the foreclosure, an award to the purchaser of possession of the mortgaged real estate, as of the date 30 days after the entry of the order." 735 ILCS 5/15-1508(g) (West 2014). Generally, the word "shall" in a statute is mandatory (*Andrews v.*

Foxworthy, 71 Ill. 2d 13, 21 (1978)), and the foreclosure law specifically provides that “ ‘shall’ as used in this Article means mandatory and not permissive.” 735 ILCS 5/15-1105(b) (West 2014).

¶ 8 We need not decide, however, whether the order here contravened the statute, as doing so would not grant Fitzgerald any effective relief. “Generally, courts of review do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided.” *People v. McCoy*, 2014 IL App (2d) 130632, ¶ 11. “An appeal is considered moot where it presents no actual controversy or where the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party.” *Id.*

¶ 9 Here, the order appealed from provided Fitzgerald with possession of the premises 60 days after its entry or, at the latest, October 12, 2015. Obviously, reversing that order could not give Fitzgerald possession any earlier. Thus, the issue is moot.

¶ 10 Fitzgerald does not expressly acknowledge the mootness problem and thus does not argue for any exception to the mootness doctrine. At one point, he lists various hypothetical costs that could be incurred by a foreclosure-sale purchaser whose possession of the property is delayed. This could be an attempt to invoke the capable-of-repetition exception. See *id.*, ¶ 13.

¶ 11 The exception for issues capable of repetition, yet evading review, has two requirements. First, the challenged action must be too short to be fully litigated prior to its cessation. *Id.* Second, there must be a reasonable expectation that the same party would again be subjected to the same action. *Id.*

¶ 12 The first requirement is met here, as the challenged action was only 60 days long. However, the second element is not. Nothing in the record suggests that Fitzgerald will be

subjected to similar actions in the future. The mere hypothetical possibility that such an action might occur again is not sufficient.

¶ 13 The appeal is dismissed.

¶ 14 Appeal dismissed.