

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

BANK OF AMERICA, N.A.,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff,)	
)	
v.)	No. 14-CH-249
)	
JOSE E. MOJICA, UNKNOWN OWNERS,)	
and NON-RECORD CLAIMANTS,)	
)	
Defendants)	
)	
(U.S. Bank Trust, N.A., as Trustee for LSF9)	Honorable
Master Participation Trust, Plaintiff-Appellee;)	Robert G. Gibson,
Jose E. Mojica, Defendant-Appellant).)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was properly served with process, so the trial court did not err in denying his motion to quash service. Defendant forfeited his argument that the trial court should have conducted an evidentiary hearing regarding the motion. Even otherwise, an evidentiary hearing was not necessary because defendant's affidavit did not raise any significant factual disputes. Therefore, we affirmed.

¶ 2 In this residential mortgage foreclosure action, defendant, Jose E. Mojica, appeals from the trial court's denial of his motion to quash service of process. He argues that plaintiff, U.S.

Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust (U.S. Bank Trust),¹ failed to make a diligent inquiry as to his location and should have alternatively served him by mail at the Florida address where he was residing. He further argues that the trial court should have conducted an evidentiary hearing on his motion. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On February 6, 2014, plaintiff filed a complaint to foreclose a mortgage on a house located at 529 Geneva Road in Glen Ellyn, Illinois. The complaint alleged that the mortgage was dated October 1, 2007; that the amount of the original indebtedness was \$365,500; that defendant had not paid the monthly mortgage from August 1, 2013, forward; and that he currently owed \$197,448.70 plus other costs and fees. A summons was issued the same day and directed to defendant at the property's address.

¶ 5 Plaintiff subsequently filed affidavits of attempted service. One process server unsuccessfully attempted to serve defendant at the Glen Ellyn property seven times between February 9, 2014, and February 16, 2014. The times of the attempted service ranged from 7:03 a.m. to 7:17 p.m. The affidavit indicated that there was a dog barking inside the house and vehicles were present, but no one answered the door. Another affidavit stated that affiant attempted to serve defendant on February 20, 2014, at 4796 Cambridge Street in Lake Worth, Florida. The affidavit stated that the current resident, Lorenzo Pareira, stated that he had been living at the address for about six months and did not know defendant. A third affidavit of service stated that the affiant attempted to serve defendant on February 19, 2014, at 12242

¹ Bank of America, N.A., was the original plaintiff in this case. U.S. Bank subsequently bought the note and mortgage and was substituted as plaintiff. We refer to them interchangeably as plaintiff in this disposition.

Southwest 8th Street in Miami, Florida, but was unable to because the address was a vacant store front in a shopping plaza.

¶ 6 On February 25, 2014, a private process server executed an affidavit of due and diligent search. She stated that she had performed a skip trace and obtained the following possible addresses for defendant: 529 Geneva Road in Glen Ellyn, Illinois; 12242 Southwest 8th Street in Miami, Florida; and 4796 Cambridge Street in Lake Worth, Florida. She stated that no current verifiable records were found for defendant in the employment comprehensive database search. She further stated that she searched the license plate numbers of the two cars present at the Glen Ellyn property during service attempts. They were registered to two other individuals at the Glen Ellyn property.

¶ 7 On March 11, 2014, plaintiff filed an affidavit for service by publication, stating that upon due inquiry, defendant could not be found. The motion referred to the service attempts on defendant. Notice of the foreclosure action was placed in the Daily Herald newspaper on March 21, 2014, March 28, 2014, and April 4, 2014.

¶ 8 On October 7, 2014, plaintiff filed a motion for service by a comparable method pursuant to section 2-203.1 of the Code of Civil Procedure (735 ILCS 5/2-203.1 (West 2014)). The motion referred to the service attempts and attached copies of the affidavits. Plaintiff requested to serve defendant by mailing a copy of the summons and complaint by regular and certified mail, return receipt requested. The trial court granted the motion on October 15, 2014, and gave plaintiff leave to serve defendant in the manner sought at the Glen Ellyn address. An affidavit in the record states that a process server did so on October 21, 2014.

¶ 9 On February 11, 2015, plaintiff filed a motion to substitute U.S. Bank Trust as the plaintiff. The motion stated that Bank of America, N.A., had sold the note and mortgage that

were the subject of the foreclosure action. The trial court granted the motion on March 4, 2015.

¶ 10 On April 20, 2015, plaintiff filed a motion for an order of default and a motion for entry of judgment of foreclosure and sale. On June 17, 2015, the trial court entered an order of default. It also entered a judgment of foreclosure and sale which stated that defendant owed plaintiff \$230,519.61.

¶ 11 The property was scheduled to be sold at an auction on October 20, 2015. On September 15, 2015, Rosanna Brownstein filed an appearance and an emergency motion to postpone or cancel the sale. The trial court struck the motion on October 16, 2015, because Brownstein was not a party to the action. The sale was rescheduled to February 2, 2016. According to a subsequently-filed certificate of sale, the property was sold that day to plaintiff for \$253,177.

¶ 12 However, the day before the scheduled sale, on February 1, 2016, defendant filed an appearance and a motion to quash service. He alleged as follows. From the time that the case was filed until the end of May 2014, defendant resided at the Glen Ellyn property. From the end of May 2014 up to the present, defendant resided at 4796 Cambridge Street in Lake Worth, Florida. However, from February 20, 2014, to October 15, 2014, plaintiff had not attempted to personally serve him, and it had not conducted any inquiry as to his whereabouts since February 25, 2014. Further, plaintiff did not receive a return receipt on the certified mail sent to the Glen Ellyn property's address, because defendant no longer resided there.

¶ 13 Defendant argued that plaintiff had not shown the requisite diligent inquiry or made reasonable efforts to serve him by a comparable method. He argued that plaintiff's motion for service by comparable method was based on affidavits from many months prior. Defendant additionally argued that even though process servers attempted service at the Florida addresses and the skip trace also revealed those addresses, the regular and certified mail was sent only to

the property's address. Defendant maintained that had the documents also been sent to the Lake Worth address, he would have received them. Defendant attached an affidavit from himself and a postal service tracking document indicating that the summons and complaint were never claimed and were returned to the sender. Defendant asked that the trial court quash the service of process on him and vacate all orders in the case as being void for lack of personal jurisdiction.

¶ 14 On February 17, 2016, the trial court set defendant's motion to quash for an evidentiary hearing on April 6, 2016. On March 30, 2016, defendant filed a motion for an extension of time to hold the evidentiary hearing or to allow him to appear by telephone. He alleged that he was in Colombia receiving medical treatment for various ailments, including a back injury for which he was advised not to travel in the near future.

¶ 15 On April 6, 2016, the trial court denied defendant's motion for an extension of time, denied his request to appear by telephone, and denied his motion to quash. It stated:

“It's likely that no evidentiary hearing was even necessary here, that this is not a - not really a disputed fact situation. And now we have the added problem of [defendant], even after all of this, even after the Plaintiff attempted to serve him in Lake Worth, Florida[,] in Miami, Florida, as well as at the subject property address all unsuccessfully then sought alternative service which was granted. And even now, [defendant] is not amenable to service in the United States, he's in Columbia and can't come to his own hearing on his own motion. So the delay in proceeding here, it wasn't as if the Plaintiff wasn't taking steps. They attempted to serve him at three different addresses, two out of state addresses unsuccessfully and they moved the court thereafter for alternative service which was appropriate.

[Defendant], despite having an additional court appearance just to make sure he could be present at the evidentiary hearing, cannot be present here today. The Court finds the steps taken by the Plaintiff were reasonable, they are well-directed efforts to try to serve the Defendant unsuccessfully, and that the order for alternative service was appropriately entered on this record. So the petition to quash is denied.”

The trial court canceled the evidentiary hearing scheduled for later that day.

¶ 16 On April 27, 2016, plaintiff filed a motion to confirm the report of sale and distribution and for possession. The report stated that the total proceeds of the sale equaled the total amount due to plaintiff. The trial court entered an order confirming the report of sale and distribution, and for possession, on May 5, 2016. Defendant timely appealed.

¶ 17

II. ANALYSIS

¶ 18 On appeal, defendant argues that the trial court erred in denying his motion to quash service of process.

¶ 19 A court must have personal jurisdiction over the parties in order to enter a valid judgment. *U.S. Bank National Ass’n v. Johnston*, 2016 IL App (2d) 150128, ¶ 27. Personal jurisdiction may be established by either service of process as provided by statute or by a party’s voluntary submission to the court’s jurisdiction. *BAC Home Loans Servicing, LP, v. Mitchell*, 2014 IL 116311, ¶ 18. Service of process protects a party’s right to due process through proper notification and providing an opportunity to be heard. *Johnston*, 2016 IL App (2d) 150128, ¶ 28. “[A] failure to effect service as required by law deprives a court of jurisdiction over the person, and any default judgment based on defective service is void.” *Id.*; see also *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 12 (a foreclosure judgment entered without service of process is void). This is true irrespective of whether the defendant had actual

knowledge of the proceedings. *Sutton v. Ekong*, 2013 IL App (1st) 121975, ¶ 24. A default judgment that is void due to lack of personal or subject matter jurisdiction may be attacked at any time in any court, either directly or collaterally. See *R.W. Sawant & Co. v. Allied Programs Corp.*, 111 Ill. 2d 304, 309 (1986). We apply a *de novo* standard of review to the question of whether the trial court obtained personal jurisdiction, where, as here, there is no material evidentiary conflict. *Abbington Trace Condominium Ass'n v. McKeller*, 2016 IL App (2d) 150913, ¶ 10; see also *Illinois Service Federal Savings & Loan Ass'n of Chicago v. Manley*, 2015 IL App (1st) 143089, ¶ 36 (appellate court reviews *de novo* a trial court's ruling on a jurisdictional issue where there was no evidentiary hearing and the trial court relied on the parties' written submissions and arguments in ruling on a motion to quash).

¶ 20 Section 2-203 of the Code of Civil Procedure (Code) allows for service of process by leaving a copy of the summons with the defendant personally, or by leaving a copy at the defendant's usual place of abode with a family member or a person residing therein age 13 or older, along with a mailing of the summons to that address. 735 ILCS 5/2-203 (West 2014). If such service is impractical, the plaintiff may request that the trial court allow for alternative service under section 2-203.1 of the Code (735 ILCS 5/2-203.1 (West 2014)). The plaintiff's motion for service under section 2-203.1 must include an affidavit stating the type of investigation made to determine the defendant's whereabouts and why service is impractical under section 2-203, "including a specific statement showing that a diligent inquiry as to the location of the individual defendant was made and reasonable efforts to make service have been unsuccessful." *Id.* A party requesting service by alternative means must strictly comply with section 2-203.1's requirements. *People ex rel. Waller v. Harrison*, 348 Ill. App. 3d 976, 980

(2004). The court may allow service in any manner consistent with due process. 735 ILCS 5/2-203.1 (West 2014).

¶ 21 Defendant notes that in his motion to quash, he stated that he resided at the Glen Ellyn property during February 2014 when plaintiff's process server unsuccessfully attempted service there. He further stated that at the end of May 2014, he began living at 4796 Cambridge Street in Lake Worth, Florida. Defendant argues that although plaintiff requested to alternatively serve him by certified and regular mail at the Glen Ellyn property's address, it should have also served him by mail at the Lake Worth address, which was revealed by the skip trace.² Defendant maintains that had plaintiff mailed the summons and complaint there, he would have received it. Defendant argues that plaintiff therefore failed to properly serve him by a comparable method of service. Defendant contends that this is especially true given that the certified mail to the Glen Ellyn property was returned unclaimed.

¶ 22 Defendant additionally argues that plaintiff failed to show that it made a diligent inquiry as to his location as fully as circumstances permitted. Defendant cites *Citimortgage, Inc., v. Cotton*, 2012 IL App (1st) 102438, ¶ 27. There, the process service attempted to serve the defendant at the property 10 times over the course of about two weeks. *Id.* ¶ 4. The process server also spoke to a neighbor, who did not know of defendant. Another process service unsuccessfully attempted to serve the defendant nine times at another known address. The server's affidavit stated that the defendant's name was not listed on the doorbells or mailboxes of the alternate residence. *Id.* ¶ 4. The trial court therefore allowed service by publication. *Id.* ¶ 5. The appellate court stated that it appeared, at first glance, that the plaintiff fulfilled the diligent

² Defendant acknowledges that plaintiff's affidavit for service for the Miami address indicated that the address was a vacant store front in a shopping plaza.

inquiry requirement by attempting to serve the defendant 19 times. *Id.* ¶ 27. It stated that although “ascertaining the defendant’s residence is an important factor in determining whether due inquiry and diligent inquiry were accomplished, it is not the *only* factor that the court must consider.” (Emphasis in original.) *Id.* The court stated that the defendant’s affidavit challenged the appearance of diligent inquiry in that he attached photos of the alternate residence clearly showing his name on two doorbells, contrary to the process server’s statement, and the affidavit also revealed that the process server gave an inaccurate physical description of the property. *Id.* ¶¶ 27-28. Moreover, the defendant alleged that he could have been easily served at his job because the plaintiff had his current employment information on file. *Id.* ¶ 30. The appellate court therefore held that an evidentiary hearing was warranted. *Id.* ¶ 27.

¶ 23 Defendant argues that here, unlike *Cotton*, plaintiff made only seven attempts to serve him at the Glen Ellyn property. He further argues that there was no testimony that the process server attempted to speak to neighbors, visited defendant’s place of work, or made any reasonable attempt to ascertain his whereabouts. Finally, defendant argues that the trial court did not conduct an evidentiary hearing on his motion to quash.

¶ 24 Plaintiff argues that defendant forfeited his arguments by failing to develop them and cite relevant authority. See *RG Construction Services v. Illinois Workers’ Compensation Comm’n*, 2014 IL App (1st) 132137WC, ¶ 40); see also Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). We believe that defendant has sufficiently preserved his main argument, that the trial court erred in denying his motion to quash service. We will address the forfeiture of any other arguments later in the disposition.

¶ 25 We first address defendant’s argument that plaintiff did not conduct a diligent inquiry as to his whereabouts before seeking to alternatively serve him under section 2-203.1; we conclude

that this argument is without merit. What constitutes reasonable diligence depends on the facts of the case. *People ex rel. Waller*, 348 Ill. App. 3d at 982. Here, the record indicates that plaintiff attempted to serve defendant seven times at the Glen Ellyn property between February 9, 2014, and February 16, 2014, at various times of the day. Defendant was admittedly living there during those dates, so the attempts represent a diligent attempt to serve him there. According to the process server, vehicles were present and a dog was barking inside the house, but no one answered the door. Plaintiff additionally attempted to serve defendant at a Miami address, which turned out to be a vacant storefront, and the Lake Worth address, where the current resident stated that he had been living at the address for about six months and did not know defendant. The February 25, 2014, affidavit of a process server stated that she searched the license plate numbers of the vehicles found at the Glen Ellyn address, and they were registered to the address but not to defendant. She also stated that she had searched various databases, and they revealed only the three addresses for defendant. Accordingly, plaintiff showed that it made a diligent inquiry as to defendant's whereabouts and that it made reasonable efforts to serve him which were unsuccessful (see 735 ILCS 5/2-203.1 (West 2014)), sufficient to justify allowing alternative service on him. *Cf. U.S. Bank Trust., N.A. v. Colston*, 2015 IL App (5th) 140100, ¶¶ 16-18 (service by publication was proper because the defendants could not be found upon due inquiry, in that the plaintiff unsuccessfully attempted to serve the defendants nine times at the mortgaged property and five times at an address supplied by their attorney).

¶ 26 We find this situation distinguishable from *Cotton*, as defendant's affidavit did not contradict or call into question any of the information in plaintiff's affidavits. Defendant argues that the process server should have attempted to visit defendant's place of work or speak to his neighbors. However, unlike *Cotton*, defendant did not aver that plaintiff knew where he worked

or that he could have even been served at work during the relevant time frame. Indeed, the process server's affidavit executed on February 25, 2014, stated that no current verifiable records were found for defendant in the employment comprehensive database search. *Cf. Household Finance Corp., III v. Volpert*, 227 Ill. App. 3d 453, 456 (1992) (rejecting the defendant's argument that the plaintiff should have attempted to serve him at work, where the defendant's affidavit did not state where he was working at the time of attempted service or that the plaintiff could have located him there). As for neighbors, the appellate court has held that to fulfill the due inquiry requirement, a plaintiff is not required to speak to a defendant's neighbors about the defendant's whereabouts if the defendant resided at the property and numerous service attempts were made. *TCF National Bank v. Richards*, 2016 IL App (1st) 152083, ¶ 35; *Household Finance Corp., III*, 227 Ill. App. 3d at 456. That is the situation here.

¶ 27 Defendant's argument that plaintiff should have also served him by certified and regular mail at the Lake Worth address, especially considering that certified mail to the Glen Ellyn property was returned unclaimed, is also not persuasive. For notice to satisfy due process, it must be reasonably calculated to apprise the defendant of the action and afford him an opportunity to present his objections. *O'Halloran v. Luce*, 2013 IL App (1st) 113735, ¶ 32. Plaintiff had already attempted personal service at the Lake Worth address, and the individual residing there indicated that he had been living there for six months and did not know defendant. Thus, there was no reason for plaintiff to contemplate that defendant would receive any mail there. In contrast, as plaintiff points out in its brief, regardless of where defendant was residing, he continued to retain an interest in the Glen Ellyn property. Therefore, service by mail was reasonably calculated to inform defendant of the lawsuit because it was reasonable to believe that either defendant was receiving mail there, that he had left a forwarding address with the post

office, or that the occupant of the property would inform defendant of the proceedings. Plaintiff additionally published notice in the newspaper on three occasions. Accordingly, we conclude that due process was satisfied in this case and that the trial court correctly denied defendant's motion to quash service of process.

¶ 28 Last, regarding defendant's argument that the trial court should have conducted an evidentiary hearing on his motion to quash, we agree with plaintiff that defendant has forfeited this issue by failing to develop the argument and cite authority. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *RG Construction Services*, 2014 IL App (1st) 132137WC, ¶ 40. Even otherwise, an evidentiary hearing is necessary only if the defendant presents a significant issue with respect to the truthfulness of the plaintiff's agent's affidavit. *Richards*, 2016 IL App (1st) 152083, ¶ 38. Here, defendant's affidavit did not contradict any statement from the process servers' affidavits, so the trial court could properly resolve the issue without an evidentiary hearing.

¶ 29

III. CONCLUSION

¶ 30 For the reasons stated, we affirm the judgment of the Du Page County circuit court.

¶ 31 Affirmed.