

2018 IL App (1st) 171286-U

No. 1-17-1286

Order filed April 13, 2018

Fifth Division

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

In the Matter of:)	Appeal from the
)	Circuit Court of
FEDERAL NATIONAL MORTGAGE ASSOCIATION,)	Cook County.
)	
Plaintiff-Appellee,)	No. 13 CH 6415
)	
v.)	Honorable
)	Anna Loftus,
BRIAN J. SMITH,)	Judge Presiding.
)	
Defendant-Appellant.)	

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Subject property conveyed to unrelated third parties and defendant failed to obtain a stay of the proceedings pending appeal; appeal dismissed for mootness.

¶ 2 Defendant Brian Smith appeals an order of the circuit court of Cook County which granted plaintiff Federal National Mortgage Association's motion to confirm the report of sale and distribution in a mortgage foreclosure action. On appeal, defendant contends that the

plaintiff failed to provide sufficient evidence that it provided notice of the change in sale date from December 13, 2016, to February 3, 2017. For the reasons that follow, we dismiss the appeal for mootness.

¶ 3

BACKGROUND

¶ 4 Defendant entered into a loan agreement with JP Morgan Chase Bank, N.A. (Chase) on December 3, 2009. The mortgage was secured by real property located at 1041 Susan Collins Lane, #505 in Oak Park, Illinois. Under the terms of the promissory note, the principal balance plus interest was to be repaid at a monthly rate of \$846.90 for 30 years.

¶ 5 Chase filed a foreclosure complaint against defendant in the circuit court of Cook County on March 7, 2013. Attached as exhibits were documents alleged to be copies of the mortgage, promissory note, and other related documents. Subsequently on May 9, 2016, plaintiff was substituted as the party plaintiff. Defendant filed his *pro se* appearance, answer and affirmative defenses on November 9, 2015.

¶ 6 Plaintiff subsequently filed motions for summary judgment, judgment of foreclosure and sale, and other related motions. Defendant's response to plaintiff's summary judgment motion and plaintiff's reply in support of the summary judgment motion followed. The circuit court thereafter granted plaintiff's motions for summary judgment and judgment of foreclosure and sale on September 12, 2016.

¶ 7 Plaintiff initially filed a notice of sale on November 10, 2016, indicating a sale of the property would be held on December 13, 2016. Defendant subsequently filed a *pro se* motion to reconsider and a motion to vacate judgment (which was filed by counsel on defendant's behalf pursuant to a limited scope appearance), which stayed the sale. Both of defendant's motions

were denied on February 2, 2017. The circuit court then ordered the judicial sale to proceed on February 3, 2017. No new notice of sale was filed.

¶ 8 On February 17, 2017, plaintiff filed motions for orders approving the report of sale and distribution, possession, and a personal deficiency against defendant.

¶ 9 Counsel for defendant was granted leave to file, and did file, a limited scope appearance to contest plaintiff's motions. In his response to plaintiff's motion to approve the sale, defendant argued that the sale should not be approved because the notice did not comply with subsections 15-1508(b)(i) and (iv) of the Illinois Mortgage Foreclosure Act (Act) (735 ILCS 5/15-1508(b)(i), (iv) (West 2016)). Although defendant conceded that the sale took place less than 60 days after the noticed sale date of December 13, 2016, and thus no new notice was required under the Act, defendant nonetheless argued that there was no evidence that plaintiff or the selling agent gave him notice of the February 3, 2017, sale date pursuant to the statute.

¶ 10 Oral arguments were held on April 19, 2017.¹ The circuit court granted plaintiff's motions on April 19, 2017, and this appeal was filed on May 19, 2017.² The record indicates that defendant did not seek a stay pending appeal in the circuit court pursuant to Supreme Court Rule 305. Ill. S. Ct. R. 305 (eff. July 1, 2004).

¶ 11 Prior to any briefing by the parties, plaintiff filed a motion in this court to dismiss the appeal for lack of jurisdiction on the basis of mootness as the sale was already approved and the property had passed to a third party, which was denied.

¹ Defendant's brief contains a reference to oral argument; however, no corresponding transcript of proceedings has been filed on appeal.

² A separate notice of appeal was filed on May 18, 2017, by attorney Kenneth Elkins raising other issues in this case.

¶ 12

ANALYSIS

¶ 13 On appeal, defendant contends that the trial court abused its discretion in granting plaintiff's motion for an order approving the report of sale and distribution where plaintiff did not sufficiently show compliance with the requirements of section 15-1507 (735 ILCS 5/15-1507 (West 2016)) and section 15-1508 (735 ILCS 5/15-1508 (West 2016)) of the Act. Specifically, defendant repeats the arguments he made in the trial court, namely that plaintiff failed to provide sufficient evidence of notice in adjourning the sale from December 13, 2016, to February 3, 2017.

¶ 14 Plaintiff contends that this appeal is moot and that the appeal must be dismissed because defendant failed to seek a stay of judgment and that the property has been conveyed to a third party who is not a party to these proceedings. Alternately, plaintiff contends that defendant's argument is forfeited because he failed to cite to any authority supporting his claim; that there is no evidence or authority to support defendant's contention of an abuse of discretion by the trial court; and defendant forfeited any new arguments on appeal by failing to raise them in the trial court or to supply evidence to support his contentions.

¶ 15 In response, defendant contends that plaintiff's argument is devoid of a citation to a binding mortgage foreclosure case from the Illinois Supreme Court or elsewhere that interprets Rules 305(k) and 361 in the manner that plaintiff wants to apply them in this case. Defendant notes that plaintiff cites only the "16-year-old" opinion in *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514 (2001) in support.

¶ 16 This court has an independent obligation to consider whether or not it has jurisdiction to hear an appeal. *A.M. Realty Western, L.L.C. v. MSMC Realty, L.L.C.*, 2016 IL App (1st) 151087,

¶ 67. Our supreme court has stated that the ascertainment of a court's own jurisdiction is one of the "most important tasks of an appellate court panel when beginning the review of a case." *People v. Smith*, 228 Ill. 2d 95, 106 (2008). Moreover, denial of a motion to dismiss an appeal is not final, and the question of the appellate court's jurisdiction to hear a case may be revisited at any time before final disposition of the appeal. *In re Marriage of Breslow*, 306 Ill. App. 3d 41, 57 (1999).

¶ 17 As a general rule, courts in Illinois 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. *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). An appeal is moot if no actual controversy exists or events have occurred that make it impossible for the reviewing court to grant the complaining party effectual relief. *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 291 (2005).

¶ 18 If the property which is the subject of an appeal is sold to a third party who is not a party to the litigation or a nominee for a party to the litigation, the appeal is moot unless the appellant previously obtained a stay of the trial court's judgment within the time allowed for filing a notice of appeal. *Steinbrecher*, 197 Ill. 2d at 527-28; *Town of Libertyville v. Moran*, 179 Ill. App. 3d 880, 886 (1989). A reviewing court ordinarily will not decide a moot issue. *People ex rel. Sklodowski v. State*, 162 Ill. 2d 117, 130 (1994). Moreover, Rule 305(k) (Ill. S. Ct. R. 305(k) (eff. July 1, 2004))³ protects a third-party buyer from the reversal or modification of a judgment regarding that property.

³ Rule 305 has been modified, effective July 1, 2017; the modification did not affect the wording of section (k).

¶ 19 Here, the title to the property at issue passed pursuant to a final judgment when the trial court issued an order confirming the sale on April 19, 2017. See *Margaretten & Co. Inc. v. Martinez*, 193 Ill. App. 3d 223, 227-28 (1990) (order approving the sheriff's sale was a final judgment order). Second, the record establishes that the right, title and interest of the property has passed to persons who were not part of the foreclosure proceeding, namely to Ping Sun and Meng Zhu Hao. Third, it is undisputed that defendant failed to obtain a stay of judgment in either the trial court or this court within the time allowed for filing a notice of appeal, as required by Rule 305(k) (eff. July 1, 2004).

¶ 20 Accordingly, the instant appeal is moot, and the relief sought by defendant is barred by Rule 305(k) (eff. July 1, 2004). We therefore dismiss the appeal.

¶ 21 **CONCLUSION**

¶ 22 For the foregoing reasons, we dismiss the appeal for mootness.

¶ 23 Appeal dismissed.