2019 IL App (2d) 190004-U
No. 2-19-0004
Order filed August 8, 2019

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

ASSOCIATED BANK, NATIONAL ASSOCIATION, Plaintiff-Appellee, v. KONRAD JANDA, MARZENA WADZYNSKA, ZBIGNIEW WASZYNSKI IZABELA SZESTOWICKA, WOJCIECH JANDA, and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, Defendants (Izabela Szestowicka, Defendant-Appellant)	)	Appeal from the Circuit Court of Lake County. No. 11-CH-5387 Honorable Jacquelyn D. Melius, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Birkett and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: We dismissed defendant's appeal as moot: although defendant asserted that she was invalidly served with plaintiff's foreclosure complaint, she had no interest in the property and thus could not have contested the foreclosure.

¶ 2 In this foreclosure action, defendant, Izabela Szestowicka, appeals the dismissal of her petition for relief from judgment filed under section 2-1401 of the Code of Civil Procedure

(Code) (735 ILCS 5/2-1401 (West 2018)), alleging that the foreclosure was void because she was not properly served when the summons did not bear the seal of the circuit court. Plaintiff, Associated Bank, National Association, contends that the matter is moot because defendant did not have an actual interest in the property and that the defect in the summons was a technical defect that did not render it void. We dismiss the appeal as moot.

¶ 3 I. BACKGROUND

¶ 4 On December 5, 2011, plaintiff filed a foreclosure complaint naming Konrad Janda and Marzena Wadzynska as mortgagors of a property in Lincolnshire. Defendant was named as being married to Zbigniew Wadzynski, who had an undivided 15% interest in the property. The complaint stated that defendant "may claim some interest in subject premises as to homestead right."

¶ 5 On December 7, 2011, a summons was issued for defendant at the address of the property in Lincolnshire. A second summons was issued to defendant at an address in San Diego, California. Neither summons bore the seal of the court, although each had a stamp listing the clerk of the court's name as a witness. The summons directed to the Lincolnshire address was returned for nonservice with a note from the process server stating that he spoke to Wadzynska, who told him that defendant did not live there and instead lived in California. Defendant was personally served at the San Diego address. The record contains an affidavit of military service stating that defendant last resided in San Diego.

¶ 6 Defendant never appeared or filed an answer and, on May 4, 2012, an order of default was entered against her. After lengthy litigation, the property was foreclosed and sold to plaintiff in 2017. Janda and Wadzynska appealed, but that appeal was dismissed due to their failure to file a brief.

¶ 7 On July 10, 2018, defendant filed her section 2-1401 petition, alleging that all orders in the case should be vacated because her summons was void when it did not bear the seal of the court. Defendant alleged that the original complaint named her as an owner of the property and that she was a necessary party to the litigation. Defendant did not specifically state which summons she was attacking, but said that it was attached as an exhibit. She also stated that a summons sent to Janda, illustrating what the seal of the court looked like, was attached as an exhibit. Those exhibits do not appear in the record, but an earlier document showing Janda's summons shows the seal of the court on it.

¶ 8 Plaintiff filed a motion to dismiss, alleging that the summons was valid, that a change in the law (see 735 ILCS 5/2-201(c) (West 2018)) defeated defendant's claim, and that the matter was moot because defendant had no actual interest in the property and thus was not a necessary party. Both parties fully briefed the issues. The record shows that a hearing was held on December 6, 2018. That same day, the trial court granted the motion to dismiss. There is no transcript or substitute of that hearing in the record. Defendant appeals.

¶ 9 II. ANALYSIS

¶ 10 Defendant contends that the trial court erred in granting the motion to dismiss, because her summons did not bear the seal of the court. However, she cites only to the summons sent to the Lincolnshire address. She does not mention the second summons that was personally served on her in California. Plaintiff contends in part that the matter is moot because the record shows that defendant had no actual interest in the property. Thus, even if the service sent to the Lincolnshire address was improper, defendant would have no standing to defend against the foreclosure. We agree that we need not decide whether the defect in the summons rendered it

void, because doing so would be purely advisory and would not grant defendant any effective relief.

¶ 11 "Generally, a judgment rendered without service of process, where there has been neither a waiver of process nor a general appearance by the defendant, is void regardless of whether the defendant had actual knowledge of the proceedings." *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc*., 172 Ill. App. 3d 993, 1001 (1988). Accordingly, a foreclosure judgment entered without service of process is void. *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 12. Where a summons is invalid, service of the same is also without effect. *Schorsch*, 172 Ill. App. 3d at 1001.

¶ 12 However, "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. "It is well established that a reviewing court will dismiss a pending appeal where the court has notice of facts which show that only a moot question is involved." *Schweickart v. Powers*, 245 Ill. App. 3d 281, 286 (1993). "A question is moot when no actual rights or interests of the parties remain or when events occur which render it impossible for the reviewing court to grant effective relief to either party." *Id.* Our supreme court has cautioned that a court should not decide a case where any judgment rendered would be wholly ineffectual for want of a subject matter on which it could operate and would have only an advisory effect. *People ex rel. Black v. Dukes*, 96 Ill. 2d 273, 276 (1983).

¶ 13 Here, the information in the common-law record shows that defendant was married to a person with an undivided 15% interest in the property. Contrary to her assertion in her petition, she was not an owner of the property. She was not on the title to the property, was not a mortgagor, and was not residing at the property. Instead, she was listed in the complaint as a

person who "may" have a homestead interest in the property. But because she was not maintaining the property as her primary residence, she could not claim a homestead exemption. *GMAC Mortgage, LLC v. Arrigo*, 2014 IL App (2d) 130938, ¶ 34. Thus, the record shows that, contrary to her assertions in her petition, defendant had no actual interest in the property and was not a necessary party.

¶ 14 Defendant does not make any argument that she actually did reside at the property or otherwise had any actual interest in it. To the extent that she might have shown otherwise at the hearing on her petition, we lack any record of that hearing.

¶ 15 "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of a complete record, we must presume that the trial court acted properly. See *id.* at 392. Here, the record shows that a hearing was held, but there is no transcript or substitute of it. Thus, we resolve any doubts as to the matter against defendant.

¶ 16 Defendant's only argument in regard to mootness is that the matter is outside the scope of her section 2-1401 petition. But defendant placed the matter in issue by incorrectly claiming that she was a necessary party to the action. To accept defendant's argument would undo years of litigation for no practical effect, as she would not be a proper party to defend the case upon new litigation. As a result, defendant asks us to issue a purely advisory opinion, which we cannot do. See *Black*, 96 Ill. 2d at 276. Defendant does not argue that any exception applies. Accordingly, we dismiss the appeal as moot.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, the appeal is dismissed.

¶ 19 Appeal dismissed.