2020 IL App (1st) 191445-U

SIXTH DIVISION
May 8, 2020

No. 1-19-1445

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

U.S. BANK, NATIONAL ASSOCIATION, as Successor Trustee to Bank of America, N.A., as Successor by Merger to LaSalle Bank N.A., as Trustee for Registered Holders of the Structured Asset Securities Corporation, Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2003-BC13,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	
MARY E. ELDRIDGE; ROBERT E. ELDRIDGE; MARQUETTE BANK, as Successor Trustee Under Trust No. 88-4-7 a/k/a Marquette National Bank, as Trustee Under a Trust Agreement Dated 4/19/1988 and Known as Trust No. 88-4-7; UNKNOWN OWNERS; and NON-RECORD CLAIMANTS,	)	No. 11 CH 25851
Defendants,	)	
(Mary E. Eldridge and Robert E. Eldridge, Defendants-Appellants).	)	Honorable John J. Curry, Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendants were properly served by alternative service. Circuit court properly rejected defendants' motion to dismiss for want of prosecution. Defendants forfeited any objection to the bank's motion to correct misnomer.

¶ 2 In July 2011, plaintiff U.S. Bank, N.A., as trustee for various entities (U.S. Bank), filed a complaint for foreclosure against Mary Eldridge and other unknown owners. On June 12, 2019, the circuit court granted U.S. Bank's motion for an order approving sale. The court also granted an *in rem* deficiency judgment on the Eldridge property. On appeal, Mary Eldridge and her husband Robert, who came into the case as an unknown owner of the property, (the Eldridges), argue that they were not properly served by posting and by mail, and that the court improperly denied their motion to dismiss for want of prosecution and improperly granted U.S. Bank's motion to correct misnomer. For the following reasons, we reject each of these arguments and affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 22, 2003, U.S. Bank's predecessor in interest, Finance America LLC, made a $125,037 loan to Mary Eldridge for the property located at 7737 West 80th Place, Bridgeview, Illinois. The note was secured by a mortgage. On October 18, 2010, an assignment of mortgage transferred to U.S. Bank all title and interest related to the mortgage.

¶ 5 On July 25, 2011, U.S. Bank filed a complaint to foreclose mortgage against several defendants, including Mary Eldridge and unknown owners and non-record claimants. The complaint alleged that Mary Eldridge defaulted on her monthly mortgage payments from June 1, 2010, through the date of the complaint.

¶ 6 Pursuant to a circuit court order allowing alternative service, U.S. Bank attempted to serve Mary Eldridge by publication in 2011. On October 19, 2012, Mary Eldridge filed a motion to quash that service which the circuit court granted on October 25, 2013. In the order granting the motion to quash, the circuit court noted that Mary Eldridge was "purportedly served via abode

service on 8/7/13." On February 23, 2016, Mary Eldridge filed a *pro se* motion to quash the "alleged personal service of summons and complaint dated August 7th 2013." On August 31, 2016, after a hearing, the circuit court granted Mary Eldridge's motion to quash personal service.

¶ 7 On November 14, 2016, U.S. Bank filed the motion for alternative service upon Mary Eldridge that is at issue on this appeal. This motion requested permission to serve Mary Eldridge by regular and certified mail, as well as posting on the property. U.S. Bank attached affidavits from three special process servers detailing their attempts to serve the summons and complaint upon Mary Eldridge at her property on 16 occasions and at work between September 6, 2016, and September 25, 2016. Those affidavits are discussed in some detail in our analysis. On December 5, 2016, the circuit court granted U.S. Bank's motion to serve by mail and posting. Subsequent affidavits from a special process server confirmed service on Mary Eldridge's residence by both certified and regular mail on January 12, 2017, and by posting on January 14, 2017.

¶ 8 On May 14, 2018, U.S. Bank filed motions for default order, for entry of judgment of foreclosure and sale, for voluntary dismissal of unknown owners and non-record claimants, and to appoint a selling officer. The same day, U.S. Bank also filed a motion to correct misnomer, petitioning the circuit court to amend U.S. Bank's name on all documents to "U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America National Association, as Trustee, Successor by Merger to LaSalle Bank National Association, as Trustee for Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates Series 2003-BC13."

¶ 9 On May 25, 2018, Mary Eldridge filed a *pro se* motion to quash what that motion described as "service by publication" that had been allowed by the court on December 5, 2016. Mary Eldridge submitted her own affidavit in support and requested an evidentiary hearing. In the affidavit, Mary Eldridge stated that the process server's affidavit was perjured, as Mary Eldridge

was not avoiding service and the special process server only attempted to serve her at her residence on two occasions. Mary Eldridge attached a photograph taken by her doorbell security system dated September 8, 2016, showing the first instance the process server rang her doorbell. Mary Eldridge also stated in her affidavit that the process server's second attempt occurred on September 17, 2016, when he spoke with Mary Eldridge's daughter at the residence. On May 29, 2018, after hearing oral arguments, the circuit court denied Mary Eldridge's motion. In that order, it gave Mary Eldridge 21 days to answer the complaint or otherwise plead.

¶ 10 On June 1, 2018, Robert Eldridge filed a *pro se* motion, identifying himself as an unknown owner, requesting to represent himself, and asking the court to quash the service by posting on unknown owners. On June 1, 2018, Mary Eldridge also filed a *pro se* motion, clarifying that she wanted to quash the service by *posting*, not publication, and asking the circuit court to reconsider its order denying her motion to quash. On June 19, the circuit court granted Robert Eldridge's motion to intervene *pro se* but denied the Eldridges' motions to quash service by posting.

¶ 11 On July 24, 2018, the court heard argument on a motion to dismiss and a petition for change of venue filed by Robert Eldridge. Neither the petition nor the motion is included in the record on appeal. But the transcript from the hearing is included. At the hearing, Robert Eldridge argued that U.S. Bank posted an alias summons on the residence on January 14, 2017, and moved for default judgment on April 26, 2018. According to Robert Eldridge, the 470-day delay between posting and movement for default judgment violated Rule 218, which provides a 182-day limit between filing the complaint and the court holding a case management conference. Robert Eldridge argued that U.S. Bank also violated the diligent attempt to effect service required by Rule 103(b) because "they had the case for four years and attempted to serve me twice and asked for a default judgment." After hearing oral argument from both sides, the circuit court denied Robert Eldridge's

motion to dismiss.

¶ 12 On August 28, 2018, the circuit court entered an order of default against Mary Eldridge and Marquette Bank, dismissed the unknown owners and non-record claimants from the case, entered a judgement for foreclosure and sale pursuant to section 15-1506 of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1506 (West 2016)), appointed a selling officer for the property, and granted U.S. Bank's motion to correct misnomer.

¶ 13 On March 12, 2019, now represented by counsel, the Eldridges filed a motion to reconsider the circuit court's denial of their motion to quash service by publication and to hold all orders void. The factual basis for that motion and for the court's ruling are discussed in our analysis. A hearing was held on that motion on March 18, 2019, and it was denied.

¶ 14 On June 12, 2019, the circuit court granted U.S. Bank's motion for an order approving the sale of the property. The circuit court also granted an *in rem* deficiency judgment of $108,047.33 against the subject property.

¶ 15 On July 12, 2019, the Eldridges appealed, specifically listing the order entered on July 24, 2018, denying the Eldridges' motion to quash service and to change venue; the order entered August 28, 2018, entering judgment of foreclosure and appointing a selling officer; the order entered on March 18, 2019, denying the Eldridges' motion to reconsider; and the order entered on June 12, 2019, approving sale and granting possession.

¶ 16 II. JURISDICTION

¶ 17 On July 12, 2019, 30 days after the circuit court granted approval of sale and possession, the Eldridges filed a timely notice of appeal in the matter. This court has jurisdiction pursuant to Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. July 1, 2017) governing appeals from final judgments entered by the circuit court in civil cases.

¶ 18 III. ANALYSIS

¶ 19 On appeal, the Eldridges' *pro se* brief raises what they label as "seven points" for reversal, five of which are variations on their claim that Mary Eldridge was never properly served. Specifically, the Eldridges argue that the circuit court did not acquire jurisdiction, should have quashed service, should have dismissed for want of prosecution, improperly allowed special service, should have held an evidentiary hearing relative to the process servers' affidavits, and abused its discretion in granting U.S. Bank's motion to correct misnomer. They also argue that the process servers' affidavits were false. We consider most of these arguments in turn, after addressing U.S. Bank's contention that we should not consider some or all of them for various reasons.

¶ 20 A. This Court May Consider Appellants' Arguments on Service and Motion to Dismiss

¶ 21 U.S. Bank contends the Eldridges' brief did not comply with Illinois Supreme Court Rule 341(h) and that they have therefore forfeited any review of their claims. We certainly agree with U.S. Bank that the Eldridges' brief does not meet the criteria set forth in Illinois Supreme Court Rule 341(h). See Ill. S. Ct. R. 341(h) (eff. May 25, 2018). The Eldridge brief does not contain an introductory paragraph, a statement of the issues presented for review, or the applicable standards of review, as required by the rule. *Id.* Moreover, the Eldridge brief includes a "Procedural History" in lieu of a statement of facts, often with arguments and without the citations to the record that are required by subsection (h)(6) of the rule. Ill. S. Ct. R. 341(h)(6) (eff. May 25, 2018).

¶ 22 Adherence to Rule 341 is not an inconsequential matter, and where an appellant's brief fails to comply, this court has authority to dismiss the appeal. *Zadrozny v. City Colleges of Chicago*, 220 Ill. App. 3d 290, 292-93 (1991). Even though the Eldridges are *pro se*, such litigants must still comply with the rules of procedure. *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451

(1983). Despite the insufficiency of the Eldridges' brief, however, we may still consider the appeal "so long as we understand the issue [the party] intends to raise and especially where the court has the benefit of a cogent brief of the other party." *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 23 Although the Eldridges' brief does not comply with the requirements of Rule 341(h), they do make clear at least some of the issues that they intend to raise on appeal. In addition, our review is further facilitated by the cogent brief of U.S. Bank. Therefore, this court uses its discretion to consider the Eldridges' appeal despite their brief's severe deficiencies.

¶ 24 U.S. Bank also argues that the Eldridges have forfeited any objection to the circuit court order allowing them to correct a misnomer because they raised no objection to the bank's motion in the circuit court. We agree. "Arguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal." *Parikh v. Division of Professional Regulation of the Department of Financial & Professional Regulation*, 2012 IL App (1st) 121226, ¶ 28.

¶ 25 U.S. Bank also argues that the Eldridges forfeited objections to some of the specific rulings of the circuit court regarding service for various reasons. However, the objections that U.S. Bank claims are forfeited all concern jurisdiction and, as U.S. Bank acknowledges, "[a] judgment entered by a court without jurisdiction over the parties is void and may be challenged at any time, either directly or collaterally." *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. Therefore, we will consider the Eldridges' arguments regarding the court's various rulings on service.

¶ 26 B. Mary Eldridge Was Properly Served

¶ 27 Five of the Eldridges' arguments are different ways of contending that they were not properly served. U.S. Bank points out that Robert Eldridge, who was not an original defendant in

the case, submitted himself to the circuit court's jurisdiction by naming himself as an unknown defendant and filing motions seeking to change venue and dismiss the case. The Eldridges do not argue otherwise, and we agree that Robert Eldridge voluntarily submitted himself to the court's jurisdiction. See *In re Marriage of Verdung*, 126 Ill.2d 542, 549-50 (1989) ("participation in the proceedings was sufficient to invoke *in personam* jurisdiction over [the defendant]"). Thus, the only service issue is whether the circuit court properly obtained jurisdiction over Mary Eldridge through alternative service. We find that she was properly served and the court had jurisdiction to enter all of its orders.

¶ 28 Depending on the proceedings held in the circuit court, the standard of review with respect to a motion challenging jurisdiction based on a lack of proper service could be either *de novo* or manifest weight of the evidence. *Wells Fargo Bank. N.A. v. Cannon*, 2013 IL App (1st) 112141, ¶ 11. Because the circuit court denied the motion to quash based entirely on documentary evidence, without holding an evidentiary hearing, this court reviews the circuit court's ruling and its decision not to hold an evidentiary hearing in coming to that ruling *de novo*. *Id.* ¶¶ 10-11. However, we consider the issue of whether the court erred in denying the motion to reconsider for an abuse of discretion. *Midway Park Saver v. Sarco Putty Co*., 2012 IL App (1st) 110849, ¶ 17. An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. (Internal quotation marks omitted.) *In re Marriage of Heroy*, 2017 IL 120205 ¶ 24.

¶ 29 As a general rule, personal jurisdiction over a defendant may be obtained "(1) by leaving a copy of the summons with the defendant personally, [or] (2) by leaving a copy at the defendant's usual place of abode" with a family member or fellow household member aged 13 years or older. 735 ILCS 5/2-203 (West 2010). However, where standard service is impractical, the court is

authorized to order an alternative method of service to be made "in any manner consistent with due process." 735 ILCS 5/2-203.1 (West 2010). Section 2-203.1 of the Code of Civil Procedure (Code) (*id.*) requires a party seeking alternative service "to present an affidavit that demonstrates the diligent efforts [the] plaintiff made to reasonably ascertain the whereabouts of the defendant to be served and to explain that those efforts were unsuccessful." *Thompson v. Ross Dialysis-Englewood, LLC*, 2017 IL App (1st) 161329, ¶ 18.

¶ 30 The Eldridges contend that U.S. Bank failed to establish due inquiry in ascertaining Mary Eldridge's whereabouts and diligent efforts to serve her. U.S. Bank attached the affidavits of three process servers to its motion for alternative service in support of its claim that it completed a due and diligent search and effort to serve. One process server, Kevin Pedersen, described in his affidavit the searches he had done to discover Mary Eldridge's place of residence. He searched "public and non-public databases, as well as various other data resources and records, including, but not limited to: Social Security Death Index; Directory Assistance; Department of Motor Vehicles records; voter registration; professional licenses; department of corrections; real property tax rolls; and real property sales and transfer records." Results of these searches indicated Mary Eldridge's last known address of residence was 7737 West 80th Place in Bridgeview, Illinois, and that her place of employment was a Target at 7601 Kingery Highway in Willowbrook, Illinois.

¶ 31 Another process server, Jacob Osojnak, swore in his affidavit that he attempted to serve Mary Eldridge at her listed address of employment, the Target in Willowbrook, on September 8, 2016. Jacob Osojnak stated that he could not serve Mary Eldridge during that attempt because the manager told him that Mary Eldridge had "not worked for Target in 2 to 3 years."

¶ 32 Process server James Anderson swore in his affidavit that he attempted service at Mary Eldridge's address of residence 16 times from September 6, 2016, through September 25, 2016.

Each of Mr. Anderson's descriptions of his attempts included information regarding parked vehicles at the property, dogs barking, whether lights were on inside the home, and one instance of a garage sale where he spoke with two women who stated that Mary Eldridge "was not there" and refused to give their information. Mary Eldridge later confirmed in her own affidavit that one of the women Mr. Anderson spoke with that day was her daughter. Mr. Anderson concluded his affidavit by saying Mary Eldridge was "refusing service."

¶ 33 In her motion to quash, Mary Eldridge did not dispute that the process servers ascertained where she lived or where she had worked. Instead, she claimed to "have evidence" that Mr. Anderson only attempted service at her residence twice in September 2016, despite his affidavit swearing he attempted service 16 times. Specifically, Mary Eldridge swore that Mr. Anderson attempted service once on September 8, 2016, evidenced by a picture of him taken by her Ring home security system, a motion-detecting camera attached to Mary Eldridge's doorbell. Mary Eldridge swore that Mr. Anderson's second attempt occurred on September 17, 2016, when he spoke with her daughter at the garage sale. Mary Eldridge concluded her affidavit by saying that "[a]t no other time was this man at my residence."

¶ 34 At most, Mary Eldridge's affidavit calls into question the number of attempts that were made to serve her. There was simply no dispute that diligent inquiry was made, that Mary Eldridge lived at the residence where service was attempted, and that at least two attempts were made at that address. While she claims to "have evidence," Mary Eldridge does not explain how she knows that none of the additional attempts to serve her that Mr. Anderson describes were made. Rather, she confirms that at least two of these attempts were exactly as he had described them and offers no details at all as to the other attempts that Mr. Anderson describes. Mary Eldridge's affidavit does nothing to call into question U.S. Bank's showing of diligent inquiry and reasonable attempts

at service. Moreover, the alternative service that was approved included posting and regular, as well as certified, mail, which was clearly designed to reach Mary Eldridge, and thus took into consideration the due process concerns of section 2-203.1 of the Code.

¶ 35 We also find no error in the circuit court's refusal to hold an evidentiary hearing on the validity of the process servers' affidavits. The circuit court is only required to hold such a hearing if "the defendant is able to present a significant issue with respect to the truthfulness of the affidavit filed by the plaintiff's agent[s] for service." *Citimortgage, Inc. v. Cotton*, 2012 IL App (1st) 102438, ¶ 18. As we noted above, Mary Eldridge's affidavit fails to do that. Mary Eldridge's statements that Mr. Anderson's affidavit was "beyond perjured" and that he was at her address at no other time beyond the two attempts she acknowledges were conclusory and thus properly disregarded by the court. See Ill. S. Ct. R. 191(a) (eff. Jan. 4, 2013) (affidavits submitted in support of a motion to contest personal jurisdiction "shall not consist of conclusions but of facts admissible in evidence"); see also *Betts v. City of Chicago*, 2013 IL App (1st) 123653, ¶ 24 (disregarding conclusory statements that violated Rule 191(a) in an affidavit). The Eldridges' motion to quash simply did not create a "significant issue" with respect to Mr. Anderson's affidavit.

¶ 36 The Eldridges also contend that the court erred in denying their motion to reconsider. The purpose of a motion to reconsider is to enable a party to bring to the circuit court's attention newly discovered evidence, changes in the law, or errors in the court's application of existing law. *Martinez v. River Park Place, LLC*, 2012 IL App (1st) 111478, ¶ 23.

¶ 37 The Eldridges did submit additional affidavits to their motion, all of which were directed at contradicting Mr. Anderson's statements that he attempted service on September 18 at 1:46 p.m. and September 22 at 12:30 p.m. and found no vehicles in the driveway. Joseph Kaput, who worked for the Village of Bridgeview, swore in his affidavit that the Treasure Days garage sale was held

on September 17 and 18, 2016, in Mary Eldridge's neighborhood. The Eldridges also attached affidavits from Robert Eldridge, three of their children, and one friend, all stating they met at Mary Eldridge's residence somewhere between 9 and 10 a.m. on September 22, 2016, for a family breakfast. Robert Eldridge swore in his affidavit that the group returned to the residence around noon, with at least four cars in the driveway. Each individual swore in their affidavits that the group remained at the residence "until late afternoon." The motion does not provide any reason that those affidavits could not have been provided earlier with the motion to quash.

¶ 38 There is a transcript of the court's ruling on the motion to reconsider. As the circuit court noted in the record, the additional affidavits contained facts which were already considered in some manner when the court denied the motion to quash. In addition, there were numerous deficiencies in the motion, including the fact that it was based on the assumption that Mary Eldridge had been served by publication, when in fact she had received service by certified and regular mail, as well as posting. The court also noted the long history of what appeared to him to be the Eldridges' attempts to evade service. There was ample basis for the circuit court's ruling and no abuse of discretion.

¶ 39 C. The Circuit Court Did Not Err by Denying Robert Eldridge's Motion to Dismiss

¶ 40 The Eldridges also argue that the circuit court erred by failing to dismiss the case for want of prosecution. Specifically, the Eldridges argue there were two lapses in prosecution that warranted dismissal. The Eldridges claim the first lapse occurred from January 8, 2014, when U.S. Bank substituted counsel, until U.S. Bank's November 25, 2015, motion for entry of judgment of foreclosure. The second lapse in prosecution began on January 11, 2017, upon the issuance of U.S. Bank's alias summons, until U.S. Bank filed various motions on April 26, 2018. The Eldridges contend these two lapses in prosecution, 686 days and 490 days, respectively, warranted dismissal.

¶ 41 The Eldridges contend that dismissal was required under Supreme Court Rule 218(a) (eff. Oct. 4, 2002). In the circuit court, they also argued that dismissal was required under Supreme Court Rule 103(b) (eff. July 1, 2007). However, neither rule required dismissal. Rule 218 states that following the filing of a complaint, "the court shall hold a case management conference within 35 days after the parties are at issue and in no event more than 182 days." Ill. S. Ct. R. 218(a) (eff. Oct. 4, 2002). Rule 218 further states that at "the initial and any subsequent case management conference, the court shall set a date for a subsequent management conference or a trial date." Ill. S. Ct. R. 218(b) (eff. Oct. 4, 2002).

¶ 42 Here, the record indicates there was an initial case management conference held on September 23, 2011, exactly 60 days after the initial complaint was filed on July 25, 2011. Not only did this timing fall short of the 182-day threshold set out in Rule 218(a), but that case management conference also concluded that no further case management conferences were needed, pursuant to Rule 218(b). Moreover, nothing in Rule 218 suggests that the failure to hold a timely case management conference should result in dismissal.

¶ 43 Rule 103(b) is also of no help to the Eldridges. That rule looks only to whether there has been diligence in service of process and the delay that the Eldridges complain about did not reflect any lack of diligence. Indeed, the alias summons was issued on September 2, 2016, the circuit court granted a motion for alternative service on December 9, 2016, and U.S. Bank subsequently issued an alias summons and served it via certified mail, regular mail, and posting in January 2017.

¶ 44 More broadly, whether a case should be dismissed for want of prosecution depends on the facts of the case, and such determinations rest within the circuit court's discretion. *People v. Kruger*, 2015 IL App (4th) 131080, ¶ 8. The circuit court found the evidence related to U.S. Bank's alleged lack of diligence during the two lapses cited by the Eldridges to be completely insufficient

to support their argument that the case should have been dismissed. As the trial court recognized, U.S. Bank never abandoned this claim and the length of time it took to pursue it was, in large part, the result of the difficulty the bank had in serving Mary Eldridge. The circuit court's denial of the motion to dismiss for want of prosecution was not an abuse of discretion.

¶ 45 IV. CONCLUSION

¶ 46 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 47 Affirmed.