2012 IL App (1st) 110917-U

FIFTH DIVISION
April 13, 2012

No. 1-11-0917

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 JUDICIAL DISTRICT

INLAND BANK AND TRUST,	)	
	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	2009 CH 1833
	)	
GRAFIN, INC. AND ROBERT SOBCZAK-SLOMCZEWSKI,	)	Honorable
	)	John C. Griffin,
	)	Judge Presiding.
Defendants-Appellants.	)	

PRESIDING JUSTICE EPSTEIN delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Circuit court had personal jurisdiction over defendants. Defendants waived their argument that plaintiff had not received leave of court to engage a special process server, and even without waiver, appellate court could take judicial notice of standing order granting plaintiff's law firm leave to appoint a special process server.

¶ 2 In January 2009, plaintiff Inland Bank and Trust initiated mortgage foreclosure proceedings against defendants Grafin, Inc. and Robert Sobczak-Slomczewski. The trial court entered default judgment against defendants and later confirmed the sheriff's sale of defendants'

property. Several months later, defendants attempted to vacate the judgment. Defendants first moved to quash service and vacate the judgment, contending that plaintiff had not received leave of court to engage a special process server. In fact, on January 8, 2009, the circuit court had entered a standing order granting plaintiff's law firm, Levenfeld Pearlstein, LCC, appointing a special process server in all cases filed for the period of January 1, 2009 through March 31, 2009. The standing order was entered pursuant to General Administrative Order No. 2007-03, which allows law firms handling mortgage foreclosure cases in the Chancery Division to, by motion, seek a standing order for appointment of a special process server for a specified time period. The record does not indicate when defendants were notified of the standing order, but the record is clear that before plaintiff even filed a response to defendants' motion to quash, the circuit court ordered the defendants to amend their motion. In the amended motion, defendants did not challenge the appointment of the process server and instead argued that they had not been properly served. After an evidentiary hearing, the circuit court denied the amended motion to quash service and vacate the judgment. Defendants filed the instant appeal.

¶ 3 On appeal, defendants have abandoned their argument that they were not properly served and now contend that "there is no evidence that a special process server was ever appointed by the lower court." According to defendants, it follows that the service of process was defective under section 2-202 of the Code of Civil Procedure (735 ILCS 5/2-202(a) (West 2008)), the circuit court was without personal jurisdiction over defendants, and all judgments entered by the circuit court must be vacated.

¶ 4 Absent a general appearance, personal jurisdiction can be acquired only by service of process in the manner directed by statute. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986); see 735 ILCS 5/2-301(a) (West 2008). "A judgment rendered without service of process, either by summons or by publication and mailing, 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." *Id.* "When a defendant has not been served with process as required by law, the court has no jurisdiction over that defendant and a default judgment entered against him or her is void. [Citation.] A petition attacking a judgment as void may be brought at any time, in either a direct or collateral proceeding. [Citation.]" *Equity Residential Properties Management Corp. v. Nasolo*, 364 Ill. App. 3d 26, 32 (2006);

¶ 5 At the outset, plaintiff argues that although defendants contested personal jurisdiction in the trial court, they have not properly preserved the argument they now present on appeal. "It is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal." *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996). While defendants argued in their initial motion to quash that personal jurisdiction was lacking because there was no record that plaintiff obtained leave to engage a special process server, the trial court never ruled on that motion. Instead, defendants withdrew the motion and were granted leave to file an amended motion to quash. In their amended motion, defendants abandoned their claim that there was no record of the appointment of a special process server and contested the court's personal jurisdiction on an alternative basis. The record indicates that the trial court never had the opportunity to rule on defendants' initial motion to quash, and instead of requesting a ruling

on that motion, defendants chose to pursue a different argument. Defendants never properly raised the special process server issue in the trial court, and thus they have failed to preserve the basis on which they now seek to contest personal jurisdiction.

¶ 6 Even if not waived, defendants' argument is without merit. Defendants' entire argument for lack of personal jurisdiction is based on the claim that because the standing order is not in the record, this court cannot consider it and must assume that the circuit court did not appoint a special process server. While it is undisputed that the circuit court did in fact enter a standing order appointing a special process server in cases filed by plaintiff's counsel, the standing order is not part of the record in this case. As plaintiff explains, the standing order does not bear a specific case number and instead applies to all cases in the Chancery Division filed by plaintiff's counsel. After defendants filed their opening brief on appeal, plaintiff filed a motion requesting this court to take judicial notice of the circuit court's standing order. We took the motion with the case.

¶ 7 To be subject to judicial notice, an adjudicative fact must be either "(1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." See, *e.g.*, *People v. Clark*, 406 Ill. App. 3d 622, 632-33 (2010); Ill. R. Evid. 201(b) (eff. Jan. 1, 2011). It is well established that a reviewing court can take judicial notice of an order entered by the circuit court, as well as other filings, in the proceedings below. See, *e.g.*, *Secrist v. Petty*, 109 Ill. 188 (1883) ("The doctrine is well recognized that a court will take judicial notice of the state of the pleadings, and the various steps which have been taken in a particular cause, and consequently

the judge must take notice of his own official acts in the progress of such case, and he therefore needs no proof to advise him of what he has done in it."); *In re Brown*, 71 Ill. 2d 151, 155 (1978) ("Clearly, a court may and should take judicial notice of other proceedings in the same case which is before it and the facts established therein."); *J.S.A. v. M.H.*, 224 Ill. 2d 182, 212 (2007) ("The appellate court may take judicial notice that there have been various orders entered in the circuit court during the pendency of the appeal ***."); *People v. Whitfield*, 228 Ill. 2d 502, 514 (2007) (We take judicial notice of the arguments raised in the parties' respective briefs below ***."). In addition, courts may take judicial notice of certain records of other courts and administrative tribunals, including written decisions, where the accuracy of those records cannot reasonably be questioned. See, *e.g.*, *May Dept. Stores Co. v. Teamsters Union Local No. 743*, 64 Ill. 2d 153, 159 (1976) (taking judicial notice of letters of determination of the National Labor Relations Board because "[s]uch documents fall within the category of readily verifiable facts which are capable of 'instant and unquestionable demonstration' "); *Hermesdorf v. Wu*, 372 Ill. App. 3d 842, 850 (2007) ("This court may take judicial notice of a written decision [of an administrative agency] that is part of the record in another court or administrative tribunal because such documents fall within the category of readily verifiable facts which are capable of instant and unquestionable demonstration." (internal quotation marks omitted)).

¶ 8 These decisions demonstrate that where the facts at issue are not subject to reasonable dispute and are capable of accurate and ready determination, the court may take judicial notice of court documents containing those facts—including court records in the proceedings below, the parties' briefs below, and written decisions of other courts and administrative tribunals—because

the accuracy of those records cannot reasonably be questioned. While the standing order in the present case does not bear the case number of this particular matter, the fact that the circuit court appointed a special process server is certainly within the category of facts that are capable of immediate and accurate demonstration by resort to an easily accessible source of indisputable accuracy. Indeed, defendants do not challenge the existence, accuracy, or validity of the court's standing order entered on January 8, 2009. There is simply no dispute that the court did in fact appoint a special process server. We therefore grant plaintiff's motion and take judicial notice of the standing order.

¶ 9 In sum, the circuit court's standing order, entered January 8, 2009, allowed plaintiff to engage a special process server to serve defendants, and on appeal defendants do not dispute that they were in fact served. We therefore conclude that the court properly exercised personal jurisdiction over defendants and affirm the judgment of the circuit court.

¶ 10 Affirmed; motion granted.