

2011 IL App (1st) 111689-U

FOURTH DIVISION
December 22, 2011

No. 1-11-1689

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

ONE WEST BANK, FSB,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CH 21192
)	
FRANCISCO CRUZ, UNKNOWN OWNERS and)	
NON-RECORD CLAIMANTS,)	Honorable
)	Jesse G. Reyes,
Defendants-Appellants.)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Sterba concurred in the judgment.

ORDER

¶ 1 *Held:* Summons was valid where it bore the seal of the clerk of the circuit court as well as the stamped name of the clerk. The stamped name satisfied the requirement that it be signed by the clerk.

¶ 2 In this mortgage foreclosure action, defendant-appellant Francisco Cruz appeals from the denial of his motion to vacate as void an order of the circuit court of Cook County approving the report of sale and distribution and confirming the sale and order of possession of the property commonly known as 570 Audrey Lane, Wheeling, Illinois for plaintiff One West Bank, FSB.

Cruz asserts that the court should have granted his motion to quash service because the summons issued to him bore only the stamped name of the clerk of the circuit court of Cook County, Dorothy Brown, and not her cursive signature. For this reason he also asserts that the court did not acquire personal jurisdiction over him.

¶ 3 The issue of personal jurisdiction in this case is a legal one, so we review the issue *de novo*. *People ex rel. Waller v. Harrison*, 348 Ill. App. 3d 976, 979 (2004). There is no dispute that Cruz was served with a mortgage foreclosure complaint and summons in this action, by abode service on his wife. On that summons is the seal of the clerk of the circuit court of Cook County and the stamped printed name of the clerk, Dorothy Brown. But Cruz asserts that the summons was not valid without bearing Dorothy Brown's cursive signature. He relies upon Illinois Supreme Court Rule 101(a) which provides that "[t]he summons shall be issued under the seal of the Court, [at]tested in the name of the Clerk and signed with his name." Ill. S. Ct. R. 101(a) (eff. May 30, 2008).

¶ 4 The cases cited by Cruz do not support his underlying assertion, that the summons must bear the cursive signature of the clerk. In a case dating to 1861 our supreme court held that the clerk could use his first initial to substitute for his first name in his signature on the summons. *The Bishop Hill Colony v. Edgerton*, 26 Ill. 54, 55 (1861). It is apparent that this holding did not require a complete cursive signature of the clerk to validate the summons. The fundamental question before us is what constitutes a signature. Our courts have held that a signature need not be written in cursive form; signing a document is the act of putting down a person's name to attest to the validity of an instrument and that signature may be stamped, printed or made legible by using any other device. *A.T. Willett Co. v. Industrial Commission*, 287 Ill. 487, 493 (1919); *People v. Schulman*, 120 Ill. App. 3d 518, 522 (1983). Looking to Blacks Law Dictionary we find a signature defined as "A person's name or mark written by that person or at the person's

direction." Blacks Law Dictionary 1507 (9th ed. 2009). A mark cannot reasonably be construed as a cursive signature.

¶ 5 We also do not find dispositive other cases relied upon by Cruz. In *Schorsch v. Fireside Chrysler Plymouth, Mazda, Inc.*, 172 Ill. App. 3d 993, 1000-1001 (1988), service of summons was invalidated, thus rendering void a default judgment. But that summons was not issued by the clerk of the court and was not signed or dated by the clerk nor issued under seal of the court. It was plaintiff's attorney who prepared the summons and sent it directly to the Cook County sheriff's office for service. *Schorsch*, 172 Ill. App. 3d at 1001. In *City of Chicago v. Yellen*, 325 Ill. App. 3d 311, 314 (2001), a default judgment was vacated because the summons in the record bore neither the seal nor the signature of the clerk of the court. The court found that under these circumstances the record did not show that any court had issued the summons to the defendant. *City of Chicago*, 325 Ill. App. 3d at 316. In *Ohio Millers Mutual Insurance Co. v. Inter-Insurance Exchange*, 367 Ill. 44, 54-55 (1937), the summons did not bear the names of the actual defendants and they were not personally served. Furthermore, the summons was also not signed by the clerk of the court. In none of these cases cited by Cruz is there any identification of what would be sufficient to constitute the signature of the clerk.

¶ 6 The summons in this case bears the seal of the clerk of the circuit court and the clerk's stamped name. We find no authority for the proposition that this stamped name was invalid because it was not in cursive form. Cruz has presented no evidence to establish that this summons was not issued under the authority of the clerk of the circuit court. This reasoning also applies to the one-sentence argument made by Cruz that there is no evidence in the record that the special process server who served Cruz was appointed to do so as required by law. 735 ILCS 5/2-202 (West 2008). This argument was apparently not made in the circuit court and therefore any absence of evidence relating to the special appointment of the process server is attributable

1-11-1689

to Cruz. We note in any event that the affidavit of the special process server in the record recites that he was appointed by the court to serve process in this cause. Under these circumstances we find that the summons was properly issued and the ensuing judgment was not void. We therefore affirm the judgment of the circuit court.

¶ 7 Affirmed.