

SIXTH DIVISION
December 30, 2015

No. 1-12-3323

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

NORTH SHORE COMMUNITY BANK & TRUST COMPANY,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	10 CH 39948
)	
PAMELA L. GUNLICKS, WILLIAM GUNLICKS, UNKNOWN OWNERS and NONRECORD CLAIMANTS,)	
)	Honorables
)	Darryl B. Simko,
)	Jesse G. Reyes, and
)	Laura C. Liu,
Defendants-Appellants.)	Judges Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

Held: We affirm the judgments and orders of the circuit court of Cook County arising out of this mortgage foreclosure action and remand for computation of reasonable fees.

¶ 1 Defendants William L. Gunlicks and his wife Pamela L. Gunlicks appeal from various circuit court orders entered in the course of proceedings to foreclose a mortgage that plaintiff North Shore Community Bank & Trust Company held on their residential property located at 341 Sheridan Road, Winnetka, Illinois. For the reasons that follow, we affirm the judgments and orders of the circuit court and remand for computation of reasonable fees.

¶ 2 BACKGROUND

¶ 3 On August 31, 2005, the Gunlickses executed a home equity line of credit agreement and promissory note with plaintiff bank in the principal amount of \$1,400,000.00, secured by a mortgage on the subject property. In April 2009, the Securities and Exchange Commission (SEC) sought and obtained a temporary freeze order from the United States District Court for the Middle District of Florida, freezing the Gunlickses' joint accounts as well as the assets of Founding Partners Capital Management Company (Founding Partners), a Florida-based investment company founded by William L. Gunlicks. See *Gunlicks v. Mayer Brown LLP*, 2014 IL App (1st) 130845-U, ¶¶ 5-13 (unpublished order under Supreme Court Rule 23). The Florida District Court also appointed a receiver to take control of those assets. *Id.*

¶ 4 Shortly after the freeze order was entered, the note and mortgage at issue fell into default. The freeze order precluded creditors from exercising creditors' rights against the assets of the Gunlickses and related parties. As a result, plaintiff brought an action in the Florida federal court requesting the court to modify its freeze order to allow plaintiff to commence foreclosure proceedings against the subject property in the circuit court of Cook County. After more than a

year of contested litigation, the federal court granted plaintiff permission to prosecute the foreclosure action.

¶ 5 On September 15, 2010, plaintiff filed a verified complaint in the circuit court of Cook County to foreclose the mortgage. The complaint alleged that the Gunlickses failed to make monthly payments due from June 20, 2009 to the date of filing and failed to pay real estate taxes when due along with unpaid interest. Also on September 15th, the clerk of the circuit court issued a mortgage foreclosure summons to be served on the Gunlickses. Jeffrey F. Mills, a special process server, signed an affidavit stating that on September 21, 2010, at 6:35 p.m., he served copies of the summons and complaint on Pamela Gunlicks at the subject property by leaving the copies with her. Mills further stated that William Gunlicks was served by substitute service on his wife, Pamela Gunlicks.

¶ 6 On October 5, 2010, the Gunlickses filed pleadings in the Florida federal court requesting the court to, among other things, reconsider its order modifying the freeze order allowing plaintiff to commence foreclosure proceedings against the subject property in the circuit court of Cook County. The Gunlickses tacitly acknowledged receiving the summons and complaint in the foreclosure action, but raised an issue as to whether service was properly effected. The federal court denied the Gunlickses' motion for reconsideration. At this time, the Gunlickses did not take any action in the circuit court of Cook County challenging service.

¶ 7 On October 27, 2010, a notice of a case management conference scheduled for November 16, 2010, in the foreclosure case in the circuit court of Cook County, was sent to the Gunlickses at the address of the subject property. The Gunlickses did not appear at the case management conference and there was no explanation given for their failure to do so.

¶ 8 On November 23, 2010, the Gunlickses were sent a notice of motion to find them in default for failing to appear at the case management conference and for entry of a judgment of foreclosure and sale. A hearing on the motion was scheduled for December 6, 2010. The Gunlickses did not appear at the hearing. On December 6th, the circuit court granted the plaintiff's motion for a default and entered an order of default and judgment of foreclosure and sale of the subject property. The circuit court's order included a finding under Supreme Court Rule 304(a) (eff. Feb. 26, 2010) that there was no just reason to delay either enforcement or appeal from its order.

¶ 9 On January 5, 2011, the Gunlickses moved to vacate the order of default and judgment of foreclosure pursuant to section 2-1301 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301 (West 2010)) on the ground that they had not been properly served summons. They also moved to quash service of summons pursuant to section 2-301 of the Code (735 ILCS 5/2-301 (West 2010)) on the grounds that service of process was defective and therefore the circuit court lacked personal jurisdiction over them. The Gunlickses also claimed that the process server failed to comply with the personal service requirements of section 2-203(a) of the Code (735 ILCS 5/2-203(a) (West 2010)). The motion to quash was supported by an affidavit from Pamela Gunlicks who claimed that she "was not properly served process in this cause of action." She maintained that if she had been properly served summons, she would have responded in a timely fashion.

¶ 10 On March 22, 2011, the circuit court entered an order denying the Gunlickses' motion to quash service of summons, but the court continued their motion to vacate the judgment of foreclosure to April 7, 2011, to allow them time to present their proposed defenses and counterclaims to the foreclosure. The second paragraph of the court's order stated, "Not later

than April 5, 2011 [the Gunlickses] shall file and serve their proposed answer, defenses and counterclaims or other proposed responsive pleadings and provide courtesy copies thereof to the court."

¶ 11 On April 5, 2011, the Gunlickses filed a motion requesting the circuit court to reconsider its motion denying their motion to quash service of summons. In the alternative, the Gunlickses requested the court to strike the second paragraph of its order of March 22, 2011. The Gunlickses challenged the propriety of the court to seek written defenses to the foreclosure before ruling on their motion to vacate. They claimed, among other things, that by "ordering the filing of proposed pleadings, the Court is essentially requiring Defendants' attorneys to submit their work product to the Court, which is improper, non discoverable information."

¶ 12 On April 7, 2011, the circuit court entered an order denying the Gunlickses' motion for reconsideration and to strike the second paragraph of its order of March 22, 2011. The court also denied their continued motion to vacate the judgment of foreclosure.

¶ 13 On May 2, 2011, plaintiff filed a notice of judicial sale of the subject property, setting the judicial sale for May 26, 2011.

¶ 14 On May 10, 2011, the Gunlickses filed a motion requesting the circuit court to reconsider its ruling denying their motion to strike the second paragraph of its order of March 22, 2011. The Gunlickses also requested the court to reconsider its ruling denying their motion to vacate the judgment of foreclosure. Finally, they moved for a stay of the judicial sale on the grounds that their counsel in the SEC case had negligently failed to oppose the plaintiff's motion to modify the freeze order resulting in the federal court granting plaintiff permission to prosecute the foreclosure action in the circuit court of Cook County. The Gunlickses argued that, but for the freeze order, Pamela Gunlicks, an innocent spouse and not a party in the SEC case, would

have had sufficient funds to service and reinstate the mortgage. Plaintiff filed a response to the Gunlickses' motions on May 19, 2011.

¶ 15 On May 23, 2011, the Gunlickses filed a four-count counterclaim against plaintiff for damages alleging: (1) breach of the duty of good faith and fair dealing implied in the mortgage agreement for electing to request the court to modify its freeze order to allow it to commence foreclosure proceedings against the subject property rather than petitioning the Florida federal court to lift the freeze on funds sufficient to service the mortgage; (2) breach of fiduciary duty; (3) violation of the Truth in Lending Act; and (4) violation of section 1-208 of the Uniform Commercial Code (U.C.C. § 1-208 (1988)), for accelerating repayment of the loan, where the plaintiff had no reason to believe that payment or performance was impaired.

¶ 16 On May 24, 2011, at a hearing on the Gunlickses' motion for reconsideration and for stay of the judicial sale scheduled for May 26th, the circuit court noted that the plaintiff had filed a response to the Gunlickses' motions. The Gunlickses asked the circuit court to stay the judicial sale for seven days after which time they would file a reply to the plaintiff's response. After noting that this was the Gunlickses' second motion for reconsideration, the court gave them until May 26th to reply to the plaintiff's response.

¶ 17 On May 26, 2011, the Gunlickses filed a reply to the plaintiff's response to their motions for reconsideration and for a stay of the judicial sale. In their reply, the Gunlickses argued that the circuit court should reconsider its order denying their motion to vacate the order of default and judgment of foreclosure pursuant to section 2-1301 of the Code (735 ILCS 5/2-1301 (West 2010)), because under this section of the Code the overriding consideration is whether substantial justice is being done between the parties and they were not required to allege meritorious defenses. The Gunlickses also asked the circuit court to stay the judicial sale. The Gunlickses

filed a petition for rule to show cause and a motion to strike the plaintiff's response on the grounds that the plaintiff's appraisal of the subject property was false and inaccurate.

¶ 18 On May 26, 2011, the circuit court denied the Gunlickses' motion to reconsider its ruling denying their motion to strike the second paragraph of its order of March 22, 2011. The court also denied their motion to stay the judicial sale and the court struck their counterclaims on the ground they were filed without leave of court. In addition, the court denied the Gunlickses' motion to reconsider denial of their section 2-1301 motion to vacate the order of default and judgment of foreclosure; denied their petition for rule to show cause; and denied their motion to strike the plaintiff's response.

¶ 19 On May 26, 2011, at 12:00 noon, the sheriff conducted a public sale of the subject property. Plaintiff was the successful bidder. Its bid was for \$1,050,000.00.

¶ 20 On June 3, 2011, the plaintiff moved for an order approving the sheriff's sale, and for a deficiency judgment and possession, noticed for June 30, 2011. On June 10, 2011, the Gunlickses filed an emergency motion to stay all proceedings. The circuit court struck the term "emergency" from the filing and set the matter on the standard motion call. In their motion, the Gunlickses argued: (1) that numerous inequities and violations of due process had occurred during the pendency of the foreclosure proceedings; (2) the circuit court relied upon a fraudulent appraisal; (3) the SEC case remained pending; and (4) Pamela Gunlicks was the sole title-holder to the subject property and was an innocent spouse not a party in the SEC case. The Gunlickses also filed a motion for leave to re-file their previously stricken four-count counterclaim and requested the court to reconsider the denial of their motion for rule to show cause.

¶ 21 On June 13, 2011, the plaintiff filed a sheriff's report of sale and distribution, receipt upon sale and certificate of sale. On June 16, 2011, the plaintiff filed its response to the

Gunlickses' motion for stay. The response consisted of copies of final judgment orders of the Florida federal court entering a money judgment against William Gunlicks for more than \$32 million.

¶ 22 On June 23, 2011, the Gunlickses moved to reconsider the denial of their petition for rule to show cause. In the motion, the Gunlickses argued that the circuit court relied upon a fraudulent appraisal and ignored unrebutted evidence that the appraisal was fraudulent. The Gunlickses also moved for leave to file their counterclaims *instantly*. In the motion, the Gunlickses argued that on May 26, 2011, the circuit court struck their counterclaims on the ground they were filed without leave of court, but then the court allowed the plaintiff to file its response to their motions for reconsideration and stay without leave of court and therefore it was inequitable for the court to have struck their counterclaims.

¶ 23 On June 28, 2011, the circuit court set a briefing schedule for the Gunlickses' motions and set the matter for a hearing on August 23, 2011. The court denied the Gunlickses' motion to stay the judicial sale and continued the plaintiff's motion for an order approving the sheriff's sale, and for a deficiency judgment and possession.

¶ 24 On July 11, 2011, the Gunlickses filed a notice of appeal from the June 28th denial of their motion for stay.¹ On July 25, 2011, the Gunlickses moved for substitution of Judge Darryl B. Simko for cause. The motion was withdrawn before it was ruled upon and an amended motion for substitution of judge was subsequently filed.

¶ 25 On November 1, 2011, after full briefing and oral argument, circuit court Judge Jesse Reyes, denied the amended motion for substitution of judge for cause.

¹ On November 3, 2011, our court initially granted the Gunlicks' motion to stay proceedings pending appeal, but vacated the order and dismissed that appeal for want of jurisdiction on November 16, 2011.

¶ 26 On November 3, 2011, the circuit court denied another motion for stay and set a hearing for November 22nd on plaintiff's motion to approve the sheriff's sale and the Gunlickses' motions for limited discovery, to reconsider denial of their rule to show cause, and for leave to file counterclaims. On November 22nd, all matters were continued to December 6, 2011.

¶ 27 On December 6, 2011, just prior to the scheduled hearing, Pamela Gunlicks filed a voluntary petition under Chapter 7 of the Bankruptcy Code, staying all matters. On December 21, 2011, the bankruptcy court granted the plaintiff relief from the bankruptcy stay.

¶ 28 On January 26, 2012, the circuit court set a hearing on all pending matters for February 10, 2012. On the morning set for the February hearing, the Gunlickses filed another motion for substitution of Judge Simko for cause.

¶ 29 On July 3, 2012, after full briefing, circuit court Judge Laura C. Liu, denied the Gunlickses' second motion for substitution of judge for cause. Afterwards, Judge Simko set hearing on all pending motions for July 23, 2012. On the morning set for the July hearing, the Gunlickses filed a motion to reconsider the denial of their second motion for substitution of judge for cause. Circuit court Judge Laura C. Liu, denied the motion to reconsider on August 28, 2012, and the matter was again returned to Judge Simko's call.

¶ 30 On September 19, 2012, the circuit court confirmed the judicial sale and entered a deficiency judgment against the Gunlickses, jointly and severally, in the amount of \$642,840.44 plus costs. The court also entered a separate order resolving all pending motions. The court denied the Gunlickses' motions for limited discovery, to stay proceedings, to reconsider denial of their rule to show cause, and for leave to file counterclaims *instantly*. The court struck as moot the Gunlickses' motions to supplement pending briefs and to set an evidentiary hearing.

¶ 31 The deed was issued September 24, 2012, and recorded the next day. On October 5, 2012, the Gunlickses filed emergency motions to reconsider the order approving the sheriff's sale and for a stay of the order of possession and deficiency. Both motions were denied on October 11, 2012.

¶ 32 On October 19, 2012, the Gunlickses moved to vacate the order of default and judgment of foreclosure pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)), reiterating allegations the circuit court previously considered and rejected. The circuit court denied the motion on November 2, 2012.

¶ 33 On November 8, 2012, the Gunlickses filed a notice of appeal initiating the instant appeal. On appeal, they raise a number of challenges to various circuit court judgments and orders entered in the course of proceedings to foreclose the mortgage at issue. We address each of these challenges in turn and affirm the circuit court in all respects. Additional facts are set forth as necessary.

¶ 34 ANALYSIS

¶ 35 Before we address the merits of this appeal, we first address the plaintiff's contention that our court lacks jurisdiction over the appeal. The plaintiff argues that since the default order entered on December 6, 2010, contained Supreme Court Rule 304(a) language indicating there was no just reason to delay enforcement or appeal of the order, the order became final and appealable and the 30-day window to file an appeal from the order began to run when the motion to vacate the order was denied on April 7, 2011. The plaintiff maintains there was no timely appeal of the order within the 30-day window for filing a notice of appeal and therefore we lack jurisdiction to consider this appeal. We must disagree.

¶ 36 As a general matter, a circuit court retains jurisdiction to reconsider judgments and orders within 30 days of their entry. *Workman v. St. Therese Medical Center*, 266 Ill. App. 3d 286, 291-92 (1994). After the expiration of the 30-day period, the circuit court loses the jurisdiction to amend, modify or vacate its judgments unless a petition has been filed sufficient to warrant relief from final judgments after 30 days of their entry. *Robinson v. Point One Toyota, Evanston*, 2012 IL App (1st) 111889, ¶ 18. And where no notice of appeal is filed or the notice of appeal is untimely, the appellate court is without jurisdiction to consider the appeal. *Lowenthal v. McDonald*, 367 Ill. App. 3d 919, 925 (2006). However, there are recognized exceptions to these jurisdictional rules, one being the revestment doctrine.

¶ 37 The revestment doctrine provides that a circuit court which has lost jurisdiction may be revested with jurisdiction where the parties actively participate in proceedings that are inconsistent with the finality of the court's prior order. *Illinois Bone & Joint Institute v. Kime*, 396 Ill. App. 3d 881, 887 (2009). In order for the doctrine to apply, the parties must actively participate without objection, in proceedings which are inconsistent with the merits of the prior judgment. *Leavell v. Department of Natural Resources*, 397 Ill. App. 3d 937, 951 (2010); see *Bell v. Hill*, 271 Ill. App. 3d 224, 228-29 (1995) (parties actively participated in trial court proceedings after the court's jurisdiction had ended, revesting the court with jurisdiction); *Eckel v. MacNeal*, 256 Ill. App. 3d 292, 296 (1993) (tenant's continued participation in forcible entry and detainer proceeding after circuit court had lost its jurisdiction revested the court with jurisdiction).

¶ 38 The record in this case reveals that the Gunlickses and the plaintiff actively participated in trial court proceedings for a year and a half following entry of the circuit court's order of April 7, 2011 denying the Gunlickses' motion to vacate the default order, including litigation of their

renewed request to vacate the default. See, *e.g.*, *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶ 17 (although original foreclosure order included Rule 304(a) language, plaintiff bank revested the circuit court with jurisdiction over the parties by continuing to litigate on the merits while never objecting to the court's exercise of jurisdiction). The record reveals that the parties as well as the circuit court did not treat the default order entered on December 6, 2010, as a final order. Accordingly, because the parties actively participated in continued proceedings in the circuit court after April 7, 2011, the court was revested with jurisdiction and the Gunlickses' notice of appeal filed on November 8, 2012, was timely.²

¶ 39 Turning to the merits of the appeal, the Gunlickses first contend the circuit court erred in denying their motion to quash service of summons as well as their subsequent motion to reconsider the denial of that motion. They argue the court lacked personal jurisdiction over them because of improper service and service by an unauthorized process server. We must disagree.

¶ 40 "When the circuit court denies a motion to quash service of process based solely on the documentary evidence presented and does not hold an evidentiary hearing, our review on appeal is *de novo*." *Central Mortgage Company v. Kamarauli*, 2012 IL App (1st) 112353, ¶ 26. A court acquires personal jurisdiction over a party either through a general appearance or by service of process in the manner prescribed by statute. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986). Section 2-203(a) of the Code provides, in pertinent part, that service upon an individual defendant shall be made:

"(1) by leaving a copy of the summons with the defendant personally, (2) by leaving a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the

² As a result, the plaintiff's motion to dismiss this appeal for lack of jurisdiction, which was taken with this case is denied.

contents of the summons, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode. * * * The certificate of the officer or affidavit of the person that he or she has sent the copy in pursuance of this Section is evidence that he or she has done so." 735 ILCS 5/2-203(a) (West 2010).

¶ 41 In this case, Jeffrey F. Mills, a special process server appointed by the circuit court, submitted an affidavit averring that on September 21, 2010, at 6:35 p.m., he served copies of the summons and complaint on Pamela Gunlicks at the subject property by leaving copies with her, and that he served William Gunlicks by substitute service upon his wife at the same time and place, and that copies were subsequently mailed to the Gunlickses the following day. Mills had previously been appointed by the circuit court to serve process in all foreclosure cases filed by the plaintiff's law firm pursuant to section 2-202 of the Code (735 ILCS 5/2-202 (West 2010)) and "General Administrative Order 2007-03" (June 22, 2007) (GAO 2007-03). See *U.S. Bank, N.A. v. Dzis*, 2011 IL App (1st) 102812, ¶ 20; *Onewest Bank, FSB v. Markowicz*, 2012 IL App (1st) 111187, ¶ 13. Under section 2-203(a) of the Code, Mills' affidavits constituted *prima facie* evidence of valid service that could only be overcome by clear and satisfactory evidence. See *Kamarauli*, 2012 IL App (1st) 112353, ¶ 30.

¶ 42 The record in this case shows that the Gunlickses failed to overcome by clear and satisfactory evidence the presumption of proper service of summons by the process server. The motion to quash service of summons was supported by Pamela Gunlicks' affidavit. Her affidavit merely recited in relevant part that she "was not properly served process." Her affidavit did not specify in what way the service was not properly made and it did not impeach or contradict the averments in the process server's affidavit. Where, as here, Pamela Gunlicks failed to support

her conclusory averments with facts or details contrary to the statements in the process server's affidavit, we cannot say that she rebutted his affidavit, since it is well settled that an uncorroborated affidavit by a party allegedly served, denying service, is insufficient to contradict a return of service of process. See *Four Lakes Management & Development Company v. Brown*, 129 Ill. App. 3d 680, 683 (1984); *Paul v. Ware*, 258 Ill. App. 3d 614, 617 (1994).

¶ 43 In sum, the circuit court did not err in denying the Gunlickses' motion to quash service of summons nor their subsequent motion to reconsider the denial of that motion. The summons and complaint were properly served on the Gunlickses thereby giving the circuit court personal jurisdiction over the couple.

¶ 44 The Gunlickses next contend the circuit court abused its discretion in denying their section 2-1301(e) motion to vacate the default order. "Whether a section 2-1301(e) motion to vacate should be granted lies within the sound discretion of the trial court." *In re Marriage of Romashko*, 212 Ill. App. 3d 1018, 1024 (1991). "The moving party has the burden of establishing sufficient grounds to vacate a default judgment." *Northern Trust Company v. American National Bank and Trust Company of Chicago*, 265 Ill. App. 3d 406, 412 (1994).

¶ 45 The Gunlickses argue that under section 2-1301(e) of the Code they were not required to set forth a meritorious defense as a condition for the circuit court to grant their motion to vacate the default order. They claim that the circuit court's emphasis on the meritorious-defense element indicates the court denied their section 2-1301(e) motion to vacate utilizing the standards applicable to petitions under section 2-1401 of the Code, rather than those relevant to motions under section 2-1301(e) of the Code.³

³ Section 2-1301(e) provides:

¶ 46 A party seeking to set aside a final order or judgment more than 30 days after its entry must file a petition for relief from judgment pursuant to section 2-1401(a) of the Code. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986). To be entitled to relief under this section of the Code, a party is required to show by a preponderance of the evidence: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting the defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief. *Id.*

¶ 47 In contrast, a party seeking to set aside a default, either before final judgment is entered or within 30 days thereafter, may file a motion to vacate the judgment pursuant to section 2-1301(e) of the Code. *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 11. Under this section of the Code, a party need not show the existence of a meritorious defense or a reasonable excuse for not having timely asserted such a defense. *In re Hadley D.*, 2011 IL 110886, ¶ 57. Rather, the overriding consideration is whether or not substantial justice is being done between the litigants and whether it would have been reasonable under the circumstances to compel the nonmoving party to go to trial on the merits. *Id.*

¶ 48 Nevertheless, even though a meritorious defense and reasonable excuse for delay are no longer necessary grounds for seeking relief under section 2-1301(e) of the Code, they are still factors that may be considered in determining whether substantial justice has been done between the parties under the circumstances of the case. *Campbell v. White*, 187 Ill. App. 3d 492, 503

"The court may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2012).

Under section 2-1401(a) of the Code, "Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section." 735 ILCS 5/2-1401(a) (West 2012).

(1989); *Merchants Bank v. Roberts*, 292 Ill. App. 3d 925, 930 (1997). Other factors to consider include the residence of the nonmovant, the severity of the penalty as a result of the judgment, and the hardship on the nonmovant if it is required to go to trial. *Roberts*, 292 Ill. App. 3d at 930.

¶ 49 The Gunlickses have failed to provide us with a transcript of the circuit court proceedings held on their section 2-1301(e) motion to vacate the default order. In the absence of such a transcript, or bystander's report, or agreed statement of facts as to what occurred at the hearings at issue, as a reviewing court, we must presume that the circuit court's denial of the motion was in conformity with the law and had a sufficient factual basis. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubts arising from the incompleteness of the record must be resolved against the Gunlickses. *Id.* at 392. As a result, we cannot find the circuit court abused its discretion in denying their motion to vacate the default order.

¶ 50 Moreover, even without the transcripts, a review of the record shows that the Gunlickses were not denied substantial justice by the circuit court's actions in denying their motion to vacate the default order. The Gunlickses' motion to vacate asserted two bases for vacating the default order: improper service of summons and their counterclaims. Thus, it was the Gunlickses themselves who put the issue of meritorious defenses into play and required the plaintiff and the circuit court to devote resources and time to hearing evidence on these issues. In light of the fact that the Gunlickses themselves put the issue of meritorious defenses into play as a factor to consider in determining whether substantial justice had been done between the parties, it was reasonable for the court to require them to present these defenses as a condition to granting their motion to vacate the default order. When they were given the opportunity to present their defenses to the court, the Gunlickses continually refused to do so. Accordingly, we cannot say the Gunlickses were denied substantial justice.

¶ 51 The Gunlickses next contend the circuit court abused its discretion by denying their petition for a rule to show cause as to why the plaintiff should not be held in civil contempt and sanctioned pursuant to Supreme Court Rule 137 (eff. Feb. 1, 1994) for presenting the court with a fraudulent appraisal of the subject property. The Gunlickses assert that the appraisal the plaintiff presented to the court was based on an alleged February 2011 inspection of the subject property that never occurred. In their petition for rule to show cause, the Gunlickses alleged that "In February, 2011, there was never an inspection of the property, no appraiser ever met with the homeowners of the property, no appraiser inspected the site nor the interior of the property and/or saw the improvements made thereto."

¶ 52 The Gunlickses further alleged that the appraiser falsely represented that he personally inspected the interior and exterior of the subject property. The Gunlickses maintained "the Appraiser never entered, much less inspected, the home." The Gunlickses argued that since the interior of the subject property was never inspected, the interior improvements were not taken into consideration in determining the true market value of the property.

¶ 53 "A petition for a rule to show cause is the method for notifying the court that a court order may have been violated, and the petitioner requests a hearing on the issue. *** Thus, the petition for a rule to show cause initiates the contempt proceedings, but it does not establish that a violation of a court order has in fact occurred." *In re Marriage of LaTour*, 241 Ill. App. 3d 500, 508 (1993). "At the hearing the party petitioning for the contempt finding has the burden of showing contempt, and the alleged contemnor has the opportunity to show compliance with the court's order, or an acceptable reason, like impossibility, for noncompliance." (Internal citations omitted.) *In re Parentage of Melton*, 321 Ill. App. 3d 823, 829 (2001). A reviewing court will

not overturn a circuit court's decision on a petition for a rule to show cause absent an abuse of discretion. *In re Marriage of Berto*, 344 Ill. App. 3d 705, 712 (2003).

¶ 54 On the basis of this record, we do not believe the Gunlickses met their burden of showing that the plaintiff acted contemptuously by presenting the appraisal of the subject property. The appraisal submitted by the plaintiff states on its face that it was based on a current exterior inspection and an interior inspection dating back to 2005, before interior improvements had been made. In addition, the interior photographs contained in the appraisal were identified as having been taken in 2005. The fair market value of the subject property at the time of the foreclosure sale was determined by the marketplace.

¶ 55 There was nothing misleading about the appraisal plaintiff presented to the circuit court in its May 19, 2011 filing. Moreover, before the circuit court confirmed sale of the subject property it had full opportunity to consider whatever challenges to the appraisal the Gunlickses wished to present, including whatever valuation information and opinion they wished to submit.

¶ 56 The Gunlickses next contend the circuit court abused its discretion by denying their motions to stay judicial sale of the subject property pending a determination of the receivership matter in the SEC case in the Florida federal court. Again, we must disagree.

¶ 57 A stay order seeks to preserve the status quo of the proceedings existing on the date of its entry without addressing the merits of the underlying dispute. *Kaden v. Pucinski*, 263 Ill. App. 3d 611, 615 (1994). A circuit court may stay proceedings as part of its inherent authority to control the disposition of cases before it and may consider such factors as the orderly administration of justice and judicial economy. *Kenny v. Kenny Industries, Inc.*, 406 Ill. App. 3d 56, 65 (2010). The party seeking a stay bears the burden of proving adequate justification for it. *Id.* We review the granting or denial of a motion to stay proceedings under an abuse of discretion standard.

Hastings Mutual Insurance Company v. Ultimate Backyard, LLC, 2012 IL App (1st) 101751, ¶ 29.

¶ 58 As previously mentioned, the Gunlickses moved to stay judicial sale of the subject property pending resolution of the receivership matter in the Florida federal court. In support of their motions for the stay, the Gunlickses argued that but for the freeze order, Pamela Gunlicks, an innocent spouse and not a party to the SEC case, would have had sufficient funds to service and reinstate the mortgage. The Gunlickses claim that judicial economy required staying the proceedings to afford them time to modify the asset freeze as this may have disposed of the foreclosure suit to the mutual benefit of the parties and "cleared off an already overwhelmed court docket." This claim is not supported by the record.

¶ 59 After the receivership and asset freeze went into effect, the Gunlickses filed motions in the Florida federal court for relief from the freeze to permit payment of attorney fees and sale of various Florida properties, but they never filed such motions in regard to the subject property. In its ruling denying the Gunlickses' motion to reconsider the order that modified the freeze order and allowed the plaintiff to commence foreclosure proceedings against the subject property in the circuit court of Cook County, the federal court noted that "the Gunlicks have not moved to modify the asset freeze, increase living expenses, or in any way authorize a withdrawal for payment on the house." The Gunlickses never made any timely efforts to obtain release of funds from the receiver to service and reinstate the mortgage.

¶ 60 In addition, despite their claim to the circuit court that Pamela Gunlicks would "likely" have funds available to service the mortgage, no showing in this regard was made to the court other than counsel's own assertions in the motions. No substantiating account records or affidavits were provided to the circuit court. Under these circumstances, we find the Gunlickses

failed to satisfy their burden of justifying the issuance of a stay order and thus we cannot say the circuit court abused its discretion in denying the motions to stay.

¶ 61 Next, we reject the Gunlickses' contentions that their motions for substitution of judge were improperly denied. A trial judge is presumed to be impartial. *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Where bias or prejudice is invoked as the basis for seeking substitution, the moving party must establish actual prejudice either in prejudicial trial conduct or personal bias which can stem from an extrajudicial source. *Eychaner*, 202 Ill. 2d at 280; *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 30. "On appeal, the decision on a petition for substitution of judge will not be reversed unless the trial court's decision was against the manifest weight of the evidence." *In re J.D.*, 332 Ill. App. 3d 395, 404 (2002).

¶ 62 The Gunlickses filed four motions (which included a motion to reconsider) for substitution of Judge Simko for cause pursuant to section 2-1001(a)(3) of the Code of Civil Procedure (735 ILCS 5/2-1001(a)(3) (West 2010)). This section provides in part that "Every application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant." 735 ILCS 5/2-1001(a)(3) (West 2010). Our supreme court has determined that in order to meet the statute's threshold requirements, a petition for substitution of judge must allege grounds that, if true, would justify granting substitution for cause and they must be verified by the applicant's affidavit. *In re Estate of Wilson*, 238 Ill. 2d 519, 554 (2010).

¶ 63 In this case, the Gunlickses failed to meet the threshold requirements for pleading judicial bias. Their motions for substitution of judge were not verified by the required affidavit of the applicants. Although the amended motion was supported by a cursory and conclusory affidavit of the Gunlickses' attorney, it was not supported by the mandatory applicant's verification.

¶ 64 Moreover, none of the motions alleged grounds that would, if proven, justify granting substitution for cause. The alleged cause asserted was actual prejudice evidenced by claimed errors of law, denial of motions without oral argument, failure to rule, and denial of allegedly "unrebutted" or unset motions. None of these allegations, even if true, would constitute prejudice remediable by a change of judge. "A judge's previous rulings almost never constitute a valid basis for a claim of judicial bias or partiality." *In re Estate of Wilson*, 238 Ill. 2d at 554. In addition, oral argument in a civil proceeding tried before the court without a jury, is a privilege, not a right, and is accorded to the parties by the court in its discretion. *Korbelik v. Staschke*, 232 Ill. App. 3d 114, 118-19 (1992); *Parkway Bank and Trust Co. v. Meseljevic*, 406 Ill. App. 3d 435, 441 (2010). In sum, the Gunlickses failed to meet the threshold requirements for a motion for substitution of judge for cause.

¶ 65 The Gunlickses next challenge the circuit court's decision confirming the sheriff's sale of the subject property. We will not disturb a circuit court's decision confirming a judicial sale unless we find the court abused its discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178-79 (2008).

¶ 66 Section 15-1508(b) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) governs confirmation of judicial sales. 735 ILCS 5/15-1508(b) (West 2012). This section requires a circuit court to confirm a judicial sale unless it finds, following a hearing, at least one of the following: (i) a required notice was not given; (ii) the terms of the sale were unconscionable; (iii) the sale was conducted fraudulently; or (iv) justice was otherwise not done. 735 ILCS 5/15-1508(b) (West 2012); *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 8 (2010). The party seeking to avoid confirmation of the sale has the burden of showing why

the circumstances of the sale fall within section 15-1508(b). *Beal Bank v. Barrie*, 2015 IL App (1st) 133898, ¶ 28.

¶ 67 The Gunlickses first challenge the plaintiff's bid price as unconscionable. The subject property sold for \$1,050,000 plus unpaid and unredeemed taxes and the cost of completing the foreclosure and evicting the Gunlickses. The plaintiff's appraisal valued the subject property at \$1,250,000. The Gunlickses' appraisal of the subject property valued it at \$1,695,000. Differences of opinion among appraisers about the exact value of real property are to be expected and does not necessarily mean that the terms of a judicial sale were unconscionable. See, e.g., *Robinson v. Property Tax Appeal Board*, 72 Ill. App. 3d 155, 157 (1979) (differences of opinion between two appraisers regarding value of real estate insufficient to reverse valuation assessment of property). Moreover, the issue is not the value the Gunlickses placed on the subject property, but rather what a party was willing to pay at the public foreclosure sale. See *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 8 (2006).

¶ 68 It is the policy of the law to give stability and permanency to judicial sales. *Illini Federal Savings & Loan Ass'n v. Doering*, 162 Ill. App. 3d 768, 771-72 (1987). Mere inadequacy of price alone is not sufficient to set aside a judicial sale. *Id.* Although a circuit court may decline to confirm a sale if the terms of the sale are unconscionable, the foreclosure price need not match the actual or estimated value of the property. *Burtley*, 371 Ill. App. 3d at 8. " 'It has long been recognized that property does not bring its full value at forced sales, and that price depends on many circumstances from which the debtor must expect to suffer a loss.' " *Illini Federal*, 162 Ill. App. 3d at 771-72 (quoting *Horney v. Hayes*, 11 Ill. 2d 178, 184-85 (1957)). "At a forced sale, a 'debtor must expect to suffer a loss.' " *Burtley*, 371 Ill. App. 3d at 8 (quoting *World Savings & Loan Ass'n v. Amerus Bank*, 317 Ill. App. 3d 772, 780 (2000)).

¶ 69 Under the circumstances in this case, we find that the bid price of the subject property at the court-ordered public foreclosure sale was the best evidence of the fair market value of the property at that time. There was no evidence that others were willing to pay more for the property. We cannot say that the plaintiff's bid price of \$1,050,000 was so low as to shock the conscience.

¶ 70 In addition, there was no evidence of fraud, irregularity, unfairness, mistake or inequitable conduct with regard to the judicial sale. The sale was conducted by the sheriff of Cook County on the seventh floor of the Daley Center at the time and place it was advertised to occur. In sum, we find the circuit court correctly confirmed the sheriff's sale of the subject property.

¶ 71 The Gunlickses finally contend the circuit court abused its discretion by denying their motion to vacate the order of default and judgment of foreclosure pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)). Again, we must disagree.

¶ 72 Section 2-1401 of the Code provides a statutory procedure whereby final orders, judgments, and decrees may be vacated or modified more than 30 days after their entry but no more than two years after that entry. 735 ILCS 5/2-1401(a), (c) (West 2010); *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220 (1986). Although a section 2-1401 petition arises out of the same proceeding in which the order or judgment that it is directed to was entered, it is a collateral attack on the judgment. *Burton v. Estrada*, 149 Ill. App. 3d 965, 971 (1986).

¶ 73 In order to be granted relief under this section of the Code, the petitioner must show by a preponderance of the evidence: (1) the existence of a meritorious defense or claim in the original action; (2) due diligence in presenting the defense or claim; and (3) due diligence in filing the section 2-1401 petition. *Airoom, Inc.*, 114 Ill. 2d at 220-21. Where, as here, the circuit court

disposes of a section 2-1401 petition on the pleadings without further factual determination, our review is *de novo*. *Warren County Soil and Water Conservation District v. Walters*, 2015 IL 117783, ¶¶ 46-49.

¶ 74 Section 15-1509(c) of the Foreclosure Law (735 ILCS 5/15-1509(c) (West 2012)) and *U.S. Bank National Ass'n v. Prabhakaran*, 2013 IL App (1st) 111224 are dispositive of this issue.

¶ 75 Section 15-1509(c) provides in relevant part that "[a]ny vesting of title * * * by deed pursuant to subsection (b) of Section 15-1509, unless otherwise specified in the judgment of foreclosure, shall be an entire bar of (i) all claims of parties to the foreclosure and (ii) all claims of any nonrecord claimant who is given notice of the foreclosure * * *." 735 ILCS 5/15-1509(c) (West 2012). Under section 15-1509(b), "[d]elivery of the deed executed on the sale of the real estate, even if the purchaser or holder of the certificate of sale is a party to the foreclosure, shall be sufficient to pass the title thereto." 735 ILCS 5/15-1509(b) (West 2012).

¶ 76 In *Prabhakaran*, 2013 IL App (1st) 111224, the defendant filed a section 2-1401 petition seeking to vacate a foreclosure judgment and a circuit court order confirming the judicial sale of the foreclosed property. In response, the plaintiff bank claimed that "section 15-1509(c) of the Foreclosure Law barred the defendant's section 2-1401 petition as a matter of law because the selling officer had already delivered a deed to U.S. Bank following the circuit court's order confirming the sale of the property." ¶ 26. In affirming the circuit court's decision denying the defendant's section 2-1401 petition, we concluded "[t]here is simply no Illinois authority to support the defendant's argument that she can utilize section 2-1401 to circumvent section 15-1509(a) or section 15-1509(c) of the Foreclosure Law after the circuit court confirmed the sale of the property. *** It is undisputed that the defendant was a party to the foreclosure from its inception and cannot rely upon section 2-1401 as an alternative remedy once the circuit court

confirmed the sale of the property. The clear and unambiguous language of section 15-1509(c) of the Foreclosure Law bars the defendant's claims in her section 2-1401 petition and is dispositive." *Id.* ¶ 30.

¶ 77 Our court has recognized an exception to *Prabhakaran's* holding where a section 2-1401 petition alleges a jurisdictional defect such as a lack of personal jurisdiction due to improper service. See *OneWest Bank, FSB v. Topor*, 2013 IL App (1st) 120010, ¶ 12 n. 1. However, that exception does not apply here since we have already determined that service of process was proper and that the circuit court was subsequently revested with jurisdiction over the parties.

¶ 78 In this case, the judicial sale was confirmed on September 19, 2012, and the section 2-1401 petition was filed a month later on October 19, 2012. The deed was executed and delivered by the sheriff before that filing on September 24, 2012, thereby vesting title in plaintiff under sections 15-1509(b) and 15-1509(c) of the Foreclosure Law (735 ILCS 5/15–1509(b), (c) (West 2012)) and was recorded on September 25, 2012. Therefore, section 15-1509(c) of the Foreclosure Law bars the Gunlickses' claims in their section 2-1401 petition. Moreover, the Gunlickses' section 2-1401 petition was facially deficient in that it was not supported by affidavits. See *O'Malley v. Powell*, 202 Ill. App. 3d 529, 533 (1990) ("If the facts alleged in a 2-1401 petition are not of record, the petition must be supported by affidavits").

¶ 79 The underlying mortgage and note required the Gunlickses to pay the plaintiff's attorney fees if the plaintiff was required to sue them to collect the debt. The circuit court awarded the plaintiff fees for the prosecution of the case at that level. We remand for computation of reasonable fees owed by the Gunlickses for this appeal and direct the circuit court to enter judgment for those fees.

¶ 80 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County and remand for computation of reasonable fees.

¶ 81 Affirmed and remanded with directions.