2013 IL App (1st) 123811-U

SIXTH DIVISION
September 30, 2013

No. 1-12-3811

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE BANK OF NEW YORK MELLON TRUST CO., N.A., f/k/a The Bank of New York Trust Co., N.A., as Successor-In-Interest to JPMorgan Chase Bank, National Association, f/k/a JPMorgan Chase Bank, as Trustee–SURF-BC3, Plaintiff-Appellee, v. THERESA COOPER, Defendant-Appellant (Mortgage Electronic Registration Systems, Inc., Palisades Collection, LLC, Assignee of Household Bank, Unifund CCR Partners, Unknown Owners and Nonrecord Claimants, JP Morgan Chase Bank, N.A., Defendants).	)	Appeal from the Circuit Court of Cook County. No. 09 CH 43326 Honorable Darryl B. Simko, Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

O R D E R

¶ 1 ***Held***: We affirm the judgment in this foreclosure action, where the circuit court properly denied defendant-appellant's motions to quash service and for substitution of judge.

¶ 2 In this foreclosure action, the circuit court entered a judgement of foreclosure and–ultimately–an order both confirming the sale of the subject property and granting possession to plaintiff-appellant, THE BANK OF NEW YORK MELLON TRUST CO., N.A., f/k/a The Bank of New York Trust Co., N.A., as Successor-In-Interest to JPMorgan Chase Bank, National Association, f/k/a JPMorgan Chase Bank, as Trustee–SURF-BC3 (Mellon). Defendant-appellant, Theresa Cooper, has appealed, contending that the circuit court improperly denied her motions to quash service and for substitution of judge. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 4, 2009, Mellon filed this mortgage foreclosure action against Ms. Cooper and certain other defendants that are not parties to this appeal. The complaint sought to foreclose upon a mortgage executed by Ms. Cooper with respect to the residence she owned located at 91 Mary Court in Sauk Village, Illinois (residence).

¶ 5 The record reflects that on August 25, 2009, and again on November 18, 2009, the circuit court entered a standing order for the appointment of a special process server in favor of Codilis and Associates, P.C. (Codilis), counsel for Mellon. This order was entered pursuant to the circuit court's General Administrative Order 2007–03 (GAO 2007–03). Cook Co. Cir. Ct. G.O. 2007-03 (eff. June 22, 2007). GAO 2007–03 generally authorizes law firms handling mortgage foreclosure cases to move for a standing order for the appointment of designated special process servers. The two standing orders obtained by Codilis covered, respectively, the periods ending November 30, 2009, and February 28, 2010. Among the entities authorized to serve process on behalf of Codilis by the two standing orders was "Pro-Vest, Inc.,– License Number 117-001336."

¶ 6 Affidavits of service filed in this matter indicate that while service was successfully obtained on the other specifically named defendants in the complaint, personal service upon Ms. Cooper and any unknown owners and nonrecord claimants was not successful. Specifically, an affidavit executed by Mary Ann McIntosh, "an employee/agent of ProVest, LLC, Department of Professional Regulation number 117-001336," and dated November 24, 2009, details her 12 unsuccessful attempts to serve Ms. Cooper at the residence between November 8th and November 24th of 2009. Ms. McIntosh described the residence as having white trim. Ms. McIntosh also described two vehicles that were regularly observed at the residence, a car and a sport utility vehicle (SUV). A third car was observed there on one occasion, and license plate numbers for all three vehicles were included in the affidavit.

¶ 7 In addition, Ms. McIntosh averred that: (1) neighbors were not willing to offer any assistance; (2) the utilities were activated at the residence, and lights were also turned on during a number of service attempts; (3) a television or radio was playing on a number of occasions; (4) the cars came and went over the course of the time period service was attempted; (5) notes were left at the residence and were subsequently removed; and (6) Ms. McIntosh saw curtains at the residence move on one occasion.

¶ 8 On December 4, 2009, an attorney for Codilis filed two affidavits in support of allowing service by publication upon Ms. Cooper and any unknown owners and nonrecord claimants, one pursuant to section 2-206 of the Code of Civil Procedure (Code) (735 ILCS 5/2-206 (West 2008)) and one pursuant to Cook County Circuit Court Rule 7.3 (Cook Co. Cir. Ct. R. 7.3 (eff. Oct. 1, 1996)). The section 2-206 affidavit stated that these defendants resided or had gone out of this State,

or on due inquiry could not be found, or were concealed, and that a diligent inquiry had been conducted in ascertaining the whereabouts of these defendants. In addition, the affidavit contended that, upon diligent inquiry, the addresses of Ms. Cooper and any unknown owners and nonrecord claimants were either unknown or their last known address was the residence. The Rule 7.3 affidavit was also filed by a Codilis attorney and made similar contentions, albeit with respect only to Ms. Cooper. That affidavit further contended that service upon Ms. Cooper had been attempted by the court appointed special process server.

¶ 9 Attached to the Rule 7.3 affidavit was an additional affidavit executed by "Lynda Hansell, of ProVest, LLC., IL Dept. of Professional Regulations # 117-001336," and dated December 1, 2009. Therein, Ms. Hansell outlined the various efforts she made to locate Ms. Cooper by searching various databases and other sources of information, described the prior attempts at personal service made by the process server, and averred that Ms. Cooper's current residence remained unknown after "diligent search and inquiry by affiant."

¶ 10 Between December 14 and 28, 2009, Ms. Cooper and unknown owners and nonrecord claimants were served by publication in the Chicago Daily Law Bulletin. Thereafter, Mellon filed an amended complaint adding JP Morgan Chase Bank, N.A. as an additional defendant. On August 10, 2012, the circuit court subsequently entered both an order of default against all the named defendants and a judgment for foreclosure and sale.

¶ 11 On November 13, 2012, a public auction of the residence was conducted and Mellon was the successful bidder. Two days later, Ms. Cooper filed an appearance in this matter, as well as motions to quash service and for a substitution of judge as of right. Attached to the motion to quash were the

affidavits of Ms. Cooper and her fiancé, Howard Walton, III. Therein, each averred that they had continuously lived at the residence since at least 2004, the residence had brown trim, and that a person could not see or hear a television from the first level. They also averred that, in 2009, the two owned a Nissan Maxima and a Honda Accord, and that Mr. Walton also drove an unmarked police car. On November 20, 2012, Mellon filed a motion requesting an order approving the sale and granting it possession of the residence.

¶ 12 On December 10, 2012, the circuit court entered an order denying both of Ms. Cooper's motions, and entered a separate order granting Mellon's motion for approval of the sale and granting Mellon possession of the residence. Ms. Cooper now appeals.

¶ 13 II. ANALYSIS

¶ 14 On appeal, Ms. Cooper asks this court to remand this matter for further proceedings because the circuit court improperly denied her motions to quash service and for substitution of judge. We disagree.

¶ 15 Before continuing, we note that Ms. Cooper has failed to file a report of any of the proceedings in the court below, or, in the absence of such reports, bystander's reports or agreed statements of facts pursuant to Illinois Supreme Court Rule 323(c). Ill. S. Ct. R. 323(c) (eff. December 13, 2005). We, thus, do not have a record of what additional arguments or evidence, if any, were presented or considered by the circuit court in finding her motions unfounded. As the appellant, Ms. Cooper "has the burden of presenting a sufficiently complete record of the proceedings at trial to support a claim of error." *Midstate Siding & Window Co., Inc. v. Rogers*, 204 Ill. 2d 314, 319 (2003) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). In the absence of

a complete record, a reviewing court presumes that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. "In fact, when the record on appeal is incomplete, a reviewing court should actually 'indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled or acted correctly.' " *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757-58 (2006) (quoting *People v. Majer*, 131 Ill. App. 3d 80, 84 (1985)). That said, we will move on to consider Ms. Cooper's arguments on the basis of the record before us.

¶ 16 A. Motion to Quash Service

¶ 17 With respect to Ms. Cooper's appeal from the denial of her motion to quash service, we initially address two preliminary arguments raised by Mellon.

¶ 18 Mellon first contends that, because Ms. Cooper moved for a substitution of judge in addition to her motion to quash service, she entered a general appearance in this matter and, thus, waived any challenge to the circuit court's jurisdiction over her. We disagree.

¶ 19 Objections to a court's personal jurisdiction over a party, whether brought as a motion to dismiss or a motion to quash service of process, are made pursuant to section 2-301 of the Code. 735 ILCS 5/2-301 (West 2010). It is true that section 2-301 historically distinguished between "special" and "general" appearances, and that "[u]nder the case law at the time, a general appearance 'was held to waive all objections to personal jurisdiction and subject the party to the authority of the court.' " *GMB Financial Group, Inc. v. Marzano*, 385 Ill. App. 3d 978, 985 (2008) (quoting *KSAC Corp. v. Recycle Free, Inc*., 364 Ill. App. 3d 593, 594 (2006)).

¶ 20 However, section 2-301 has since been amended to specifically provide only that "[i]f the

objecting party files a responsive pleading or a motion (other than a motion for an extension of time to answer or otherwise appear) *prior* to the filing of a motion in compliance with subsection (a), that party waives all objections to the court's jurisdiction over the party's person." (Emphasis added.) 735 ILCS 5/2-301(a-5) (West 2010). As this court has recognized, " 'section 2-301 now contains an explicit waiver provision that is narrower than the prior rule that waiver occurred if a party made a general appearance. By its terms, the statute now provides for waiver of an objection based on personal jurisdiction only if the party files a responsive pleading or a motion (other than one seeking an extension of time to answer or otherwise appear) *before* filing a motion asserting the jurisdictional objection. Notably, there is no provision that a "general appearance," as such, results in waiver.' " (Emphasis added.) *Cardenas Marketing Network, Inc. v. Pabon*, 2012 IL App (1st) 111645, ¶ 23 (quoting *KSAC Corp*., 364 Ill. App. 3d at 595). Indeed, where a party files a motion asserting a jurisdictional objection "simultaneously" with some other responsive motion, the jurisdictional challenge is not forfeited under the current language of section 2-301 of the Code. *OneWest Bank, FSB v. Topor*, 2013 IL App (1st) 120010, ¶ 11.

¶ 21 Here, the record reflects that Ms. Cooper filed her initial appearance in this matter, as well as her motions to quash service and for a substitution of judge as of right, on November 15, 2012. Because all of these items were filed simultaneously, Ms. Cooper did not waive or forfeit her objection to personal jurisdiction or voluntarily subject herself to the authority of the court. *Id.*; 735 ILCS 5/2-301(a-5) (West 2010).

¶ 22 Mellon next asserts that Ms. Cooper has forfeited a number of the arguments she presents on appeal because they were not presented to the circuit court below. It is certainly true that,

generally, "[a]rguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal." *U.S. Bank National Ass'n. v. Prabhakaran*, 2013 IL App (1st) 111224,¶ 24. "However, a judgment that is entered without personal jurisdiction over a party can be attacked directly or collaterally at any time." *Citimortgage, Inc. v. Cotton*, 2012 IL App (1st) 102438, ¶ 13. Thus, we may consider all of the arguments raised by Ms. Cooper on appeal with respect to her jurisdictional challenge. *Cotton*, 2012 IL App (1st) 102438, ¶ 13.

¶ 23 Turning to the merits of Ms. Cooper's jurisdiction challenge, we begin by noting that Mellon served Ms. Cooper by publication, pursuant to section 2-206 of the Code. 735 ILCS 5/2-206 (West 2008). In relevant part, section 2-206(a) provides:

> "Whenever, in any action affecting property or status within the jurisdiction of the court, including an action to obtain the specific performance, reformation, or rescission of a contract for the conveyance of land, plaintiff or his or her attorney shall file, at the office of the clerk of the court in which the action is pending, an affidavit showing that the defendant resides or has gone out of this State, or on due inquiry cannot be found, or is concealed within this State, so that process cannot be served upon him or her, and stating the place of residence of the defendant, if known, or that upon diligent inquiry his or her place of residence cannot be ascertained, the clerk shall cause publication to be made in some newspaper published in the county in which the action is pending." 735 ILCS 5/2-206(a) (West 2008).

Pursuant to these statutory requirements, this court has recognized:

> "The plaintiff must conduct both 'diligent inquiry' in ascertaining the defendant's

residence and 'due inquiry' in ascertaining the defendant's whereabouts before the plaintiff can properly execute an affidavit stating that the defendant cannot be found. [Citation.] The defendant may challenge the plaintiff's affidavit by filing an affidavit showing that upon due inquiry, he could have been found. [Citation.] Then, the plaintiff must either successfully question the conclusory nature of the defendant's challenge, or produce evidence showing in fact that the plaintiff had made due inquiry to locate the defendant so that process could be served upon him. [Citation.] If the defendant is able to present a significant issue with respect to the truthfulness of the affidavit filed by the plaintiff's agent for service by publication, then the trial court should hold an evidentiary hearing on the issue with the burden of proof being upon the plaintiff to establish that due inquiry was made to locate the defendant. [Citation.]" *Cotton*, 2012 IL App (1st) 102438, ¶ 18.

¶ 24 In addition, the Cook County circuit court has adopted a rule containing additional requirements for proper service by publication in foreclosure cases. Rule 7.3 provides:

"Pursuant to 735 ILCS 5/2-206(a), due inquiry shall be made to find the defendant(s) prior to service of summons by publication. In mortgage foreclosure cases, all affidavits for service of summons by publication must be accompanied by a sworn affidavit by the individual(s) making such 'due inquiry' setting forth with particularity the action taken to demonstrate an honest and well directed effort to ascertain the whereabouts of the defendant(s) by inquiry as full as circumstances permit prior to placing any service of summons by publication." Cook Co. Cir. Ct. R. 7.3 (eff. Oct. 1, 1996).

¶ 25 We also note that " '[i]t is essential to the validity of a judgment that the court have both

jurisdiction of the subject matter of the litigation and jurisdiction over the parties.' [Citation.] Absent waiver, personal jurisdiction can only be had if the party is served with process in a manner prescribed by statute. [Citation.] *** We review *de novo* whether personal jurisdiction was conferred. [Citation.]" *C.T.A.S.S. & U. Federal Credit Union v. Johnson*, 383 Ill. App. 3d 909, 910 (2008).[1]

¶ 26 We first address Ms. Cooper's specific legal challenges to some of the affidavits Mellon filed in this matter. Ms. Cooper initially complains that while both the section 2-206 affidavit and the Rule 7.3 affidavit appear to have been executed by an attorney for Codilis, the specific attorney is not identified in any way other than an illegible signature. Nor do these two affidavits specifically identify who took the actions purportedly satisfying the requirement for "due inquiry" in ascertaining Ms. Cooper's whereabouts. Ms. Cooper, thus, contends that these affidavits fail to comport with the requirements of Rule 7.3 and, therefore, failed to justify service by publication in this matter.

¶ 27 We disagree. First, this court has only recently rejected a similar challenge to a section 2-206 affidavit after recognizing that there "is no requirement in section 2-206 that the signator of a section 2-206 affidavit be identified any more specifically than by his or her signature." *OneWest Bank, FSB v. Markowicz*, 2012 IL App (1st) 111187, ¶ 45. Indeed, the affidavit at issue in *Markowicz*, 2012 IL App (1st) 111187, ¶ 44, was also filed by an attorney for Codilis who was similarly identified only by an illegible signature. Furthermore, Rule 7.3 does not add any additional requirements that must

[1]While Ms. Cooper has not provided a report of proceedings, it does not appear that the circuit court held a formal evidentiary hearing. Had the circuit court held such an evidentiary hearing, we would review "any of its relevant factual findings deferentially under the manifest weight of the evidence standard." *Madison Miracle Productions, LLC v. MGM Distribution Co.*, 2012 IL App (1st) 112334, ¶ 39.

be included in the section 2-206 affidavit itself. Thus, we must reject Ms. Cooper's challenge to the section 2-206 affidavit on the grounds that the specific attorney executing that affidavit is not identified in any way other than an illegible signature.

¶ 28 We also reject Ms. Cooper's similar assertion that the separate Rule 7.3 affidavit executed by Codilis failed to comply with the requirements of the circuit court rule. As noted above, Rule 7.3 requires that "[i]n mortgage foreclosure cases, all affidavits for service of summons by publication must be accompanied by a sworn affidavit by the individual(s) making such 'due inquiry' setting forth with particularity the action taken to demonstrate an honest and well directed effort to ascertain the whereabouts of the defendant(s) by inquiry as full as circumstances permit prior to placing any service of summons by publication." Cook Co. Cir. Ct. R. 7.3 (eff. Oct. 1, 1996). We find that this requirement was satisfied in this case by the affidavits executed by representatives of the appointed special process server.

¶ 29 As discussed above, in her affidavit Ms. Hansell outlined the various efforts she made to locate Ms. Cooper by searching various sources of information, described the12 prior attempts at personal service made by the process server, and averred that Ms. Cooper's current residence remained unknown after her "diligent search and inquiry." While her affidavit makes clear that Ms. Hansell herself did not attempt service upon Ms. Cooper at the residence, it does specifically describe those attempts in a manner that matches the averments in the previously filed affidavit of Ms. McIntosh, the person that actually attempted service. Taken together, these two affidavits fully described the inquiry made by Ms. Hansell and Ms. McIntosh to locate Ms. Cooper, and fully satisfied the requirement that "all affidavits for service of summons by publication must be

accompanied by a sworn affidavit by the individual(s) making such 'due inquiry' " Cook Co. Cir. Ct. R. 7.3 (eff. Oct. 1, 1996).

¶ 30 In rejecting Ms. Cooper's assertion, that Rule 7.3 was not fully complied with, we necessarily reject Ms. Cooper's heavy reliance upon the decision in *Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213. In that case, this court found that the circuit court improperly denied a defendant homeowner's motion to quash service in a foreclosure case because of the plaintiff bank's failure to comply with Rule 7.3. *Brewer*, 2012 IL App (1st) 111213, ¶ 25. However, we reached that decision in *Brewer* only after concluding that the plaintiff bank had failed to present "any affidavits" in which the affiant was specifically identified and swore that he or she had personally attempted to serve process on the defendant homeowner or had attempted to locate the defendant by searching available databases. *Brewer*, 2012 IL App (1st) 111213, ¶ 23-25. As the above discussion demonstrates, this matter does not present a similar set of facts.

¶ 31 That said, and although not raised as a issue by Ms. Cooper, we do note that it is not entirely clear from the record that Ms. McIntosh's affidavit itself "accompanied" the affidavit for service of summons by publication in the sense that it was actually attached thereto as an exhibit. The section 2-206 and Rule 7.3 affidavits were filed together on December 4, 2009. The Rule 7.3 affidavit itself contended that service upon Ms. Cooper had been attempted by the court appointed special process server and parenthetically cited to "attached exhibits" in support of that contention. The next three pages of the record on appeal contain Ms. Hansell's affidavit, labeled as "Exhibit A." A copy of Ms. McIntosh's previously filed affidavit does not again appear in the record until it was apparently filed three days later, on December 7, 2009, along with additional copies of the affidavits of service upon

a number of the other named defendants.

¶ 32 In light of the incomplete record on appeal, we could simply presume that Ms. McIntosh's affidavit was presented along with the affidavit for service by publication. *Smolinski*, 363 Ill. App. 3d at 757-58. Nevertheless, even without resorting to such a presumption, Ms. Hansell's affidavit clearly did accompany the request for service by publication, it clearly referenced the prior efforts at service at the residence, and Ms. McIntosh's affidavit had been filed in the circuit court prior to the request for service by publication. We find this arrangement sufficient under these circumstances, in light of section 2-301(b)'s requirement that "[i]n disposing of a motion objecting to the court's jurisdiction over the person of the objecting party, the court shall consider all matters apparent from the papers on file in the case, affidavits submitted by any party, and any evidence adduced upon contested issues of fact." 735 ILCS 5/2-301(b) (West 2010).

¶ 33 We next address Ms. Cooper's argument that the affidavits of Ms. Hansell and Ms. McIntosh were ineffective to support service by publication because they were not representatives of the actual court appointed process server. In support of this argument, Ms Cooper notes that while the two standing orders authorized "Pro-Vest, Inc." to serve process on behalf of Codilis, both Ms. Hansell and Ms. McIntosh indicated in their affidavits that they were representatives of "ProVest, LLC."

¶ 34 However, Codilis obtained the standing orders appointing a number of special process servers pursuant to section 2-202 of the Code, which provides in relevant part:

> "Upon motion and in its discretion, the court may appoint as a special process server a private detective agency certified under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004. Under the appointment, any

> employee of the private detective agency who is registered under that Act may serve the process. *The motion and the order of appointment must contain the number of the certificate issued to the private detective agency* by the Department of Professional Regulation under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004." (Emphasis added.) 735 ILCS 5/2-202(a-5) (West 2008).

¶ 35 Here, there is no contention nor any evidence that "ProVest, LLC" was not a private detective agency certified under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004. Rather, Ms. Cooper's sole contention is, "[s]ince Pro-Vest, Inc. was appointed and the license was held by Provest, LLC[,] the company serving process was not appointed." However, as Ms. Cooper herself acknowledges, the two standing orders and the two affidavits all identify the appointed process server by the same certificate number; *i.e.*, number 117-001336. Where the court appoints a private detective agency as a special process server, inclusion of the certificate number is the only specific statutory requirement that must be included in the order. That certificate number was included in the standing orders issued in this case, and that number matches the number contained in the affidavits. The statutory requirement was, therefore, fully satisfied, and any minor typographical error or misnomer included in the standing orders is irrelevant.

¶ 36 Finally, we address Ms. Cooper's substantive challenges to the sufficiency of Mellon's diligent inquiry in ascertaining her residence and its due inquiry in ascertaining her whereabouts, as reflected in the factual content of the affidavits filed in this matter.

¶ 37 As an initial matter, it is clearly apparent from the record that Mellon made a diligent inquiry

into ascertaining Ms. Cooper's residence. All of the affidavits filed by Mellon indicated that, after inquiry, 91 Mary Court, Sauk Valley, Illinois was determined to be Ms. Cooper's current or last known address. In the affidavits they filed in support of the motion to quash, both Ms. Cooper and Mr. Walton, III, confirmed that Ms. Cooper had in fact lived at that address continuously since at least 2004.

¶ 38 Thus, the only remaining question is whether Mellon made a due inquiry in ascertaining Ms. Cooper's whereabouts. "Due inquiry requires 'an honest and well-directed effort to ascertain the whereabouts of a defendant by an inquiry as full as circumstances can permit.' " *Cotton*, 2012 IL App (1st) 102438, ¶ 20 (quoting *City of Chicago v. Leakas*, 6 Ill. App. 3d 20, 27 (1972)). In *Household Finance Corp., III v. Volpert*, 227 Ill. App. 3d 453 (1992), we concluded that such a due inquiry was made where the plaintiff made repeated attempts to serve the defendant at his residence, the affidavits of the sheriff and process servers indicated that someone was home during some of those attempts but would not answer the door, and the defendant's own affidavit confirmed that he did in fact live at the address where service was attempted. *Id*. at 455. Virtually the same circumstances are present in this matter, and we come to a similar conclusion that Mellon made a due inquiry in ascertaining Ms. Cooper's whereabouts.

¶ 39 Nevertheless, Ms. Cooper contends that the affidavits she filed in support of her motion to quash "established a *prima facie* case that the process server went to the wrong house to attempt service or at least established enough of a case that the Circuit Court Judge should have conducted an evidentiary hearing." She specifically notes a number of purported discrepancies between the affidavits filed by Mellon and the affidavits she filed in support of the motion to quash, as well as

purported flaws in the affidavits filed by Mellon. We do not find these arguments persuasive.

¶ 40 First, Ms. Cooper notes that while Ms. McIntosh averred that a car and an SUV were regularly parked at the residence, Ms. Cooper and Mr. Walton, III, averred that in 2009, the two owned a Nissan Maxima and a Honda Accord, and that Mr. Walton also drove an unmarked Chevrolet Impala police car. We presume that this court is to understand that neither a Nissan Maxima, a Honda Accord, nor a Chevrolet Impala could have been the reported SUV. However, Ms. McIntosh's affidavit did not further describe the vehicles she observed in the driveway except by providing license plate numbers, and neither Ms. Cooper, nor Mr. Walton, III, have indicated that the license plate numbers provided by Ms. McIntosh did not match any of the vehicles they owned or drove. Nor did they aver that the vehicles described by Ms. McIntosh were not ones they, in fact, owned or drove, or ones that could not have been parked at the residence. Finally, Ms. McIntosh described the residence as having an attached two-car garage. Thus, two of the cars Ms. Cooper or Mr. Walton, III, owned or drove could have been parked inside at the times service was attempted. Indeed, neither of the affidavits executed by Ms. Cooper or Mr. Walton, III, affirmatively stated that the three vehicles they owned or drove either were or were not located in the driveway of the residence at times service was attempted, so as to directly impeach Ms. McIntosh's own affidavit in any way.

¶ 41 Ms. Cooper also notes that both she and Mr. Walton, III, averred that a person could not see or hear a television from the first level because it was located upstairs. However, Ms. McIntosh specifically averred that on at least one occasion she heard a "tv or radio playing." Neither Ms. Cooper or Mr. Walton, III, thus, refute that Ms. McIntosh might have heard a radio instead of a

television. Moreover, while Ms. McIntosh did specifically describe a "tv playing" on two other occasions, she did not aver that she either saw or heard the television itself. We note that both of these occasions occurred at night. This court considers it to be common knowledge that the flickering lights of a television operating inside a home may be perceived at night, without the need to see or hear the television itself.

¶ 42 Ms. Cooper also draws our attention to the fact that Ms. McIntosh described the residence as having white trim, while Ms. Cooper and Mr. Walton, III, averred that the trim was brown. However, we note that Ms. McIntosh was describing the residence as it existed in 2009 when service was attempted, while on their face the affidavits of Ms. Cooper and Mr. Walton, III, appear to describe the current condition of the residence at the time those affidavits were executed in 2012. The three affidavits are, thus, not necessarily inconsistent on this point. And again, in light of the record before us, we must indulge in every reasonable presumption in favor of the circuit court's ruling. *Smolinski*, 363 Ill. App. 3d at 757-58.

¶ 43 Next, Ms. Cooper complains that Ms. McIntosh averred that she made 12 attempts to serve process, but only described 11 of those attempts. However, a review of Ms. McIntosh's affidavit clearly includes descriptions of 12 service attempts, and we agree with Mellon that Ms. Cooper likely failed to note that multiple attempts were made on two dates in November of 2009.

¶ 44 Finally, Ms. Cooper takes issue with the averments Ms. Hansell made with respect to the efforts she made to locate Ms. Cooper by searching various databases and other sources of information. Ms. Cooper generally complains that these efforts were not sufficiently thorough, in part because they reflect an unspecified "vessel" search as opposed to a search of the license plate

numbers noted by Ms. McIntosh. Ms. Cooper cites no authority in support of this argument, so her argument is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb 6, 2013); *Nelson v. County of Kendall*, 2013 IL App (2d) 120635, ¶ 9. Moreover, it is not entirely clear whether Ms. Cooper attacks Ms. Hansell's efforts in an effort to challenge Mellon's diligent inquiry in ascertaining her residence or its due inquiry in ascertaining her whereabouts. Either way, we note again that according to the affidavits filed by Ms. Cooper herself, Mellon did in fact have Ms. Cooper's correct address and she had indeed lived at the residence since at least 2004. Ms. Cooper also did not aver that she could not have been located at the residence, nor has she asserted that Ms. Hansell's research could have reasonablely discovered some other location–for example, a workplace–where Mellon could have found her for purposes of personal service. See, *e.g.*, *Volpert*, 227 Ill. App. 3d at 456 (rejecting challenge to plaintiff bank's due inquiry into defendant's whereabouts, in part, because defendant did not aver that he could have been located at place of employment).

¶ 45 For all of the above reasons, we conclude that the circuit court properly denied Ms. Cooper's motion to quash, and properly did so without conducting a full evidentiary hearing. See *Cotton*, 2012 IL App (1st) 102438, ¶ 18, 29 (there is no requirement that the court grant an evidentiary hearing, and need do so only where a defendant presents a significant issue with respect to the truthfulness of the affidavits filed in support of service by publication).

¶ 46 B. Motion for Substitution of Judge

¶ 47 Next, we consider Ms. Cooper's contention that the circuit court should have granted her motion for substitution of judge.

¶ 48 Ms. Cooper's motion specifically indicated that is was brought pursuant to section 2-

100(a)(2) of the Code, which provides:

> "(a) A substitution of judge in any civil action may be had in the following situations:
>
> ***
>
> (2) Substitution as of right. When a party timely exercises his or her right to a substitution without cause as provided in this paragraph (2).
>
> (i) Each party shall be entitled to one substitution of judge without cause as a matter of right.
>
> (ii) An application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties.
>
> (iii) If any party has not entered an appearance in the case and has not been found in default, rulings in the case by the judge on any substantial issue before the party's appearance shall not be grounds for denying an otherwise timely application for substitution of judge as of right by the party." 735 ILCS 5/2-1001(a)(2) (West 2010).

Thus, "[u]nder section 2-1001(a)(2) of the Code, a litigant is allowed one substitution of judge without cause as of right. [Citation.] The right to substitution of judge is absolute when properly made, and the circuit court has no discretion to deny the motion." *Cincinnati Insurance Co. v. Chapman*, 2012 IL App (1st) 111792, ¶ 23. Furthermore, " '[t]he statute's provisions are to be liberally construed in order to effect rather than defeat the right of substitution' " *Chapman*, 2012

IL App (1st) 111792, ¶ 23 (quoting *Beahringer v. Hardee's Food Systems, Inc.*, 282 Ill. App. 3d 600, 601 (1996)). Any orders entered after a motion for a substitution of judge is wrongfully denied are void. *In re Marriage of Paclik*, 371 Ill. App. 3d 890, 896 (2007). Our review of a circuit court's ruling on a motion to substitute is *de novo*. *Gay v. Frey*, 388 Ill. App. 3d 827, 833 (2009).

¶ 49 Here, the parties do not dispute that the circuit court had made rulings on substantial issues in this matter prior to the filing of Ms. Cooper's motion for substitution of judge. Indeed, " '[a] ruling on a substantive issue is one that directly relates to the merits of the case.' " *Id*. (quoting *In re Austin D.*, 358 Ill. App. 3d 794, 800 (2005)). The circuit court's August 10, 2012, order of default against the named defendants and its judgment for foreclosure and sale clearly met this standard. Ms. Cooper was, therefore, not entitled to a favorable ruling on her substitution motion pursuant to section 2-1001(a)(2)(ii) of the Code. 735 ILCS 5/2-1001(a)(2)(iii) (West 2010).

¶ 50 Nevertheless, pursuant to section 2-1001(a)(2)(iii) of the Code, only rulings made after a party who is not defaulted makes an appearance are to be considered in granting or denying a substitution motion brought by that party. *Scroggins v. Scroggins*, 327 Ill. App.3d 333, 336 (2002);735 ILCS 5/2-1001(a)(2)(iii) (West 2010). Thus, "a party who has not yet had an opportunity to participate in a case does not automatically lose his or her option to substitute one judge without stating a cause and as a matter of right simply because that judge has already ruled on a substantial issue in the case prior to that party's appearance." *Paclik*, 371 Ill. App. 3d at 895.

¶ 51 Still, such a motion must be made "in a timely manner and in compliance with the statute's requirements." *Id*. at 896. Quite clearly, one of those requirements is that the party bringing the motion for substitution "not [have] been found in default." 735 ILCS 5/2-1001(a)(2)(iii) (West

2010). Here, as Ms. Cooper concedes and the record reflects, Ms. Cooper had been found in default prior to the filing of her appearance and her motion for substitution. As such, her request was not made in a timely manner and in full compliance with the requirements of section 2-1001(a)(2)(iii) of the Code. 735 ILCS 5/2-1001(a)(2)(iii) (West 2010). The circuit court, therefore, properly denied her motion for substitution of judge.

¶ 52 Nevertheless, on appeal Ms. Cooper asserts that she filed a motion to quash service challenging the circuit court's jurisdiction over her at the same time as her motion for substitution and such a challenge necessarily implicated the propriety of the prior default order entered against her. Ms. Cooper, thus, argues that an exception should be made, the circuit court should have granted the motion to substitute, and the court should have done so before a ruling was made on the motion to quash service.

¶ 53 However, "[w]hen construing a statute, our goal is to determine and effectuate the legislature's intent, best indicated by giving the statutory language its plain and ordinary meaning." *In re Andrew B*., 237 Ill. 2d 340, 348 (2010). "Reviewing courts will not depart from the statute's plain language by reading into it conditions, exceptions, or limitations that contravene legislative intent." *Id*. While the provisions of section 2-1001(a) (2) are to be interpreted liberally (*Chapman*, 2012 IL App (1st) 111792, ¶ 23), there is absolutely no such exception to a party's right to a substitution of judge as of right contained in the language of the statute. We find that it would be improper to read such an exception into this statutory right, as doing so would contravene the plain and ordinary legislative intent that motions to substitute as of right must be brought *before* a party has been found in default.

¶ 54 III. CONCLUSION

¶ 55 For the foregoing reasons, we affirm the judgement of the circuit court.

¶ 56 Affirmed.