

FIRST DIVISION
JUNE 8, 2015

No. 1-13-3778

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

INDYMAC BANK,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CH 25252
)	
AALIM MOHAMMAD,)	Honorable
)	David B. Atkins and
)	Honorable Lisa A. Marino,
Defendant-Appellant.)	Judges Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed where mortgagor's successive postjudgment motion did not toll the time for filing a timely notice of appeal.

¶ 2 This appeal arises from the October 29, 2013 order entered by the circuit court of Cook County, which denied with prejudice, a motion to reconsider a "petition for preliminary injunction" filed by defendant Aalim Mohammad (Mohammad) against plaintiff Indymac Bank (the Bank), in a foreclosure action. On appeal, Mohammad argues, *pro se*, that because the initial complaint of foreclosure was not properly filed by the Bank and the Bank never had

standing to bring the lawsuit, all of the orders entered by the circuit court in this case were void *ab initio*. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3

BACKGROUND

¶ 4 On July 15, 2008, the Bank, as mortgagee, filed a complaint for foreclosure against Mohammad for defaulting on his mortgage note¹ that encumbered the residential property located at 9145 S. Richmond Avenue in Evergreen Park, Illinois.² On July 18, 2008, Mohammad was served with the summons and complaint by substitute service. Mohammad neither answered the complaint nor otherwise pled. On January 5, 2009, the circuit court entered an order of default against Mohammad,³ and entered a "judgment for foreclosure and sale" (judgment for foreclosure) in the Bank's favor. In the judgment for foreclosure, the court found that it had jurisdiction over the parties and the subject matter of the action, found that the Bank had standing to maintain this action, and ordered a judicial sale of the property.⁴

¶ 5 On February 1, 2011, a judicial sale of the property was held at which the Bank was the highest bidder with a bid offer of \$271,780.23. On August 29, 2011, the circuit court entered an order confirming and approving the judicial sale of the property, which marked the final judgment order entered in the foreclosure action.

¹ The principal balance due on the mortgage note was \$192,800, plus interest, costs, advances and fees.

² The complaint also named as defendants Mohammad's wife, Elena, as joint owner of the property with Mohammad, as well as Mortgage Electronic Registration Systems, Inc. (MERS) and Quicken Loans, LLC (Quicken), which had an alleged inferior and subordinate interest in the subject real estate. However, the complaint noted, and the record shows, that Mohammad was the sole borrower who executed the mortgage note in March 2007. The record also shows that MERS, as "nominee" for Quicken, assigned all of its mortgage interests in the property to the Bank on July 15, 2008 and the assignment was recorded with the Cook County recorder of deeds in September 2008.

³ The order of default was also directed against Elena, MERS and Quicken.

⁴ The record suggests that Mohammad filed for bankruptcy in November 2009.

¶ 6 On September 19, 2011, Mohammad filed a *pro se* "motion to strike all pending motions, void the judgment, and dismiss case" (motion to void), alleging substantially the same arguments as those set forth in his previous motions to vacate judgment.⁵ On October 17, 2011, the Bank filed a response to Mohammad's September 19, 2011 motion to void. The Bank pointed out that the motion to void was Mohammad's sixth attempt to vacate the January 2009 judgment for foreclosure, arguing that his only recourse was to file a motion to reconsider the court's confirmation of judicial sale on August 29, 2011, that Mohammad had failed to satisfy any of the requirements necessary to sustain a motion to reconsider, and that he had only "refiled a motion which was brought five times previously and stricken or denied each time by this [c]ourt over the span of four years." On November 8, 2011, the circuit court impliedly denied Mohammad's September 19, 2011 motion to void and struck the hearing date on that motion.

¶ 7 On February 8, 2013, Mohammad filed a *pro se* "verified petition for preliminary injunction" (petition for preliminary injunction), requesting that the court enjoin the Bank to return the original promissory note to him. On July 9, 2013, the circuit court struck the petition for preliminary injunction for Mohammad's failure to appear and "for want of subject matter jurisdiction." On August 8, 2013, Mohammad filed a *pro se* motion to reconsider the court's July 9, 2013 ruling, requesting again for the return of the original promissory note on the property. On October 29, 2013,⁶ over Mohammad's objection, the circuit court denied the motion to

⁵ Following the entry of the January 2009 judgment for foreclosure but before the court's final order confirming judicial sale on August 29, 2011, Mohammad papered the court with multiple *pro se* motions and petitions making repetitive allegations in an attempt to vacate the judgment for foreclosure. All of his motions were either stricken or denied by the court. Some of Mohammad's documents seeking to vacate the judgment for foreclosure raised challenges to the Bank's standing to foreclose on the property and took issue with the circuit court's subject matter jurisdiction.

⁶ The July 9, 2013 and the October 29, 2013 orders were both entered by Judge Lisa A.

reconsider with prejudice, noting that it would consider imposing sanctions against Mohammad for any future filings of motions.

¶ 8 On November 27, 2013, Mohammad filed a notice of appeal to initiate the instant appeal, seeking review of the circuit court's October 29, 2013 ruling. On May 16, 2014, the Bank filed a motion to substitute One West Bank, N.A. (One West Bank), as a party plaintiff, on the basis that One West Bank had acquired the servicing rights from the Federal Deposit Insurance Corporation (FDIC) as "receiver" of the Bank. On that same day, May 16, 2014, the Bank filed a contemporaneous motion to dismiss the appeal (motion to dismiss), arguing, *inter alia*, that the appellate court lacked jurisdiction because Mohammad's petition for preliminary injunction did not attack any prior judgments and did not extend the time to appeal; and that the petition could not be characterized as a section 2-1401 petition but was simply a postjudgment motion that the circuit court lacked jurisdiction to consider. Mohammad filed no response to the motion to dismiss.

¶ 9 On June 4, 2014, this court granted the Bank's motion to substitute party⁷ and the motion to dismiss. On that same day, June 4, 2014, Mohammad filed a *pro se* motion for leave to file his brief *instanter*, which this court granted on June 23, 2014 and vacated the previous June 4, 2014 order dismissing the appeal. For the following reasons, we lack jurisdiction in this case.

¶ 10 ANALYSIS

¶ 11 In this appeal, Mohammad seeks review of the court's October 29, 2013 ruling, which denied with prejudice his motion to reconsider the circuit court's July 9, 2013 striking of his petition for preliminary injunction "for want of subject matter jurisdiction." We note that the

Marino. Other previous orders were entered by Judge David Atkins.

⁷ For the sake of consistency, we will also refer to the substituted plaintiff, One West Bank, as "the Bank."

reason that this mortgage foreclosure case has dragged on for so many unnecessary years can be attributed to the tactics used by the mortgagor, Mohammad, who chose to make voluminous amounts of baseless motions and filings in the circuit court that repeatedly made the same unsubstantiated arguments. Mohammad's "methods are not only counterproductive, but detrimental to the efficient and fair administration of justice." *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 1. These tactics only serve to waste significant judicial time and resources. See *id.* ¶ 92.

¶ 12 As an initial matter, we address the various errors and omissions in Mohammad's opening brief. After Mohammad filed an opening brief in the instant appeal on June 23, 2014, this court, on August 18, 2014, granted the Bank's motion to strike the brief, requiring Mohammad to refile a brief that complies with Supreme Court Rule 341 and that "presents arguments relating to the order which has been appealed." On September 30, 2014, Mohammad refiled his opening brief before this court. A side by side comparison of the original and refiled briefs reveals virtually no changes. In violation of Rule 341, the newly refiled brief contains the same defects as in the original brief, including: (1) arguments contained in the statement of facts section; (2) points and authorities listed without denoting where they appear in the brief; (3) conclusory arguments made without citation to legal authority; (4) the absence of a certificate of compliance; and (5) the absence of an appendix. See Ill. S. Ct. R. 341 (eff. Sept. 1, 2006). The procedural rules concerning appellate briefs are rules, not mere suggestions, and it is within our discretion to strike a brief and dismiss the appeal for failure to comply with those rules. See *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). Although Mohammad was given the opportunity to correct those errors, he made no real attempts to bring his refiled brief into compliance with Rule 341. Despite his obvious disregard for the appellate rules, however, we decline to dismiss the appeal

on this basis, but chose instead to resolve this lengthy case on a note of finality. See *In re Estate of Jackson*, 354 Ill. App. 3d 616, 620 (2004) (reviewing court is not obligated to dismiss the appeal even in light of multiple Rule 341 mistakes).

¶ 13 We next address the issue of jurisdiction. A reviewing court has an independent duty to consider its own jurisdiction, regardless of whether the parties have raised it as an issue, before proceeding to the merits of the case. *In re Marriage of Sheth*, 2014 IL App (1st) 132611, ¶20. When jurisdiction is lacking, the court must dismiss the appeal. *Uesco Industries, Inc. v. Poolman of Wisconsin, Inc.*, 2013 IL App (1st) 112566, ¶ 73. The filing of the notice of appeal is the jurisdictional step that initiates appellate review. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011). The notice of appeal must be filed with the clerk of the court within 30 days after the entry of the final judgment, or, within 30 days after the entry of the order disposing of a timely postjudgment motion. Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008).

¶ 14 In the case at bar, the circuit court entered a final order on August 29, 2011, which confirmed and approved the judicial sale of the property. On September 19, 2011, Mohammad filed a *pro se* motion to void, which was essentially a timely postjudgment motion to reconsider the court's August 29, 2011 confirmation of judicial sale. On November 8, 2011, the circuit court impliedly denied Mohammad's September 19, 2011 motion to void and struck the hearing date on that motion. Instead of filing a timely notice of appeal within 30 days of the November 8, 2011 ruling disposing of the postjudgment motion, however, Mohammad spent the next 15 months bombarding the circuit court with multiple filings of motions and petitions which repeatedly attacked all of the court's prior orders on the bases that the Bank allegedly lacked standing to foreclose on the property and that the circuit court allegedly lacked subject matter jurisdiction to enter any judgments in the foreclosure action. On February 8, 2013, Mohammad

filed a petition for preliminary injunction—the subject of this appeal—requesting the return of the original promissory note from the lender. The petition for preliminary injunction was not a section 2-1401 petition brought to attack any prior court judgments. See 735 ILCS 5/2-1401 (West 2012). On July 9, 2013, the circuit court struck the petition "for want of subject matter jurisdiction," and denied Mohammad's motion to reconsider that ruling on October 29, 2013. Mohammad then filed a notice of appeal on November 27, 2013, initiating the instant appeal. A party may only file one postjudgment motion directed at a judgment. See Supreme Court Rule 274 (eff. Jan. 1, 2006); *Sears v. Sears*, 85 Ill. 2d 253, 258-59 (1981) (a second postjudgment motion is not authorized by statute or supreme court rule and must be denied). Circuit courts have no authority to hear successive postjudgment motions. *Won v. Grant Park 2, LLC*, 2013 IL App (1st) 122523, ¶ 34; see also *Benet Realty Corp. v. Lisle Savings & Loan Ass'n*, 175 Ill. App. 3d 227, 231-32 (1988) (the filing of a second postjudgment motion that merely repeats arguments made in the first motion is not a "timely" posttrial motion under Rule 303(a)(1) and does not extend the time for the filing of a notice of appeal). As noted, Mohammad failed to file a timely notice of appeal within 30 days of the November 8, 2011 final ruling disposing of the postjudgment motion. Because Mohammad was only allowed one postjudgment motion, which he filed on September 19, 2011, the filing of his February 8, 2013 petition for preliminary injunction was a *successive* postjudgment motion that the circuit court had no authority to hear and did not toll the time for filing a notice of appeal. Thus, the instant notice of appeal, which was filed on November 27, 2013, over two years after the circuit court had entered a final judgment in the foreclosure action, was untimely. Because the filing of the February 8, 2013 successive postjudgment motion did not toll the time for filing a notice of appeal, and the circuit court lacked jurisdiction over Mohammad's successive postjudgment motion, the filing of his

notice of appeal before this court was also untimely. Therefore, this court lacks jurisdiction in this case.

¶ 15 We would be without authority to address the arguments contained in Mohammad's brief, even if it had been timely filed because none of those arguments or the relief sought pertained to the October 29, 2013 order that was specified in Mohammad's notice of appeal. Supreme Court Rule 303(b)(2) (eff. June 4, 2008) requires that a notice of appeal "specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." Courts invoking this rule have explained that it is " 'well established that an appellate court has jurisdiction only of those matters which are raised in the notice of appeal.' " *Steinberg v. System Software Associates, Inc.*, 306 Ill. App. 3d 157, 166 (1999) (quoting *Lewanski v. Lewanski*, 59 Ill. App. 3d 805, 815 (1978)). Courts applying these rules will construe notices of appeal liberally. *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433 (1979). As a result of this liberal construction, the failure to specify a particular order in a notice of appeal does not preclude our review of that order " 'so long as the order that is specified *directly relates* back to the judgment or order from which review is sought.' " (Emphasis added.) *In re F.S.*, 347 Ill. App. 3d 55, 68 (2004) (quoting *Perry v. Minor*, 319 Ill. App. 3d 703, 708-09 (2001)). In other words, it is appropriate to retain our jurisdiction to review the unspecified judgment "if it is a step in the procedural progression leading to the judgment specified in the notice of appeal." (Internal quotation marks omitted.) *In re F.S.*, 347 Ill. App. 3d at 69. The instant notice of appeal only specified the circuit court's October 29, 2013 judgment as the order for which review is sought. While the October 29, 2013 judgment directly relates back to the court's July 9, 2013 order striking Mohammad's petition for preliminary injunction "for want of subject matter jurisdiction," no other prior order could be considered "a step in the procedural progression"

leading to the entry of the October 29, 2013 judgment. For the reasons discussed, we lack jurisdiction to address Mohammad's arguments. Accordingly, although we would have affirmed the circuit court's July 9, 2013 ruling striking Mohammad's petition for preliminary injunction for want of subject matter jurisdiction, as well as the court's order denying with prejudice his motion to reconsider that ruling on October 29, 2013, we lack jurisdiction to hear the appeal.

¶ 16 For the foregoing reasons, we dismiss this appeal for want of jurisdiction.

¶ 17 Appeal dismissed.