2016 IL App (1st) 153091-U

FIRST DIVISION
August 22, 2016

No. 1-15-3091

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BMO HARRIS BANK, N.A., as successor in interest to Harris Bank N.A.,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	
CHICAGO TITLE LAND TRUST COMPANY AS TRUSTEE UNDER AGREEMENT DATED OCTOBER 23, 2006 AND KNOWN AS TRUST 8002347596; UNKNOWN BENEFICIARIES OF TRUST AGREEMENT DATED OCTOBER 23, 2006 AND KNOWN AS TRUST NUMBER 8002347596; AARON LEBOVIC; UNKNOWN OWNERS and NON-RECORD CLAIMANTS,	)	No. 10 CH 10670
Defendants,	)	
(Marta Modrzanska and Marek Modrzanski, as non-record claimants,	)	Honorable Daniel P. Brennan, Judge Presiding.
Defendants-Appellants).	)	

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Connors concurred in the judgment.

ORDER

¶ 1 ***Held*:** We affirm the order of the circuit court, which correctly denied defendants' motion to quash service.

¶ 2 Following a judicial foreclosure proceeding, defendants as tenants of the subject property, filed a motion to quash service alleging they were not properly served and the trial court lacked jurisdiction over them. After briefing on the issue, the trial court denied defendants' motion to quash. The trial court then denied defendants' motion to reconsider. Defendants timely filed their notice of appeal and raise only one question on appeal: whether the trial court erred in denying their motion to quash service. For the following reasons, we affirm the decision of the trial court.

¶ 3 JURISDICTION

¶ 4 A final and appealable order was entered on September 29, 2015. Defendants-appellants timely filed their notice of appeal on October 27, 2015. Accordingly, this court has jurisdiction over this matter pursuant to article VI, section 6 of the Illinois Constitution, and Illinois Supreme Court Rules 301 and 303. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 BMO Harris Bank, N.A., as successor in interest to Harris N.A., (hereinafter plaintiff) filed a foreclosure complaint on March 16, 2010. Plaintiff sought to foreclose on the mortgage granted in its favor which was recorded against the property known as 220 Wentworth Avenue, Glencoe, Illinois (hereinafter the subject property). Plaintiff named several parties as defendants including Aaron Lebovic, unknown owners and non-record claimants. Plaintiff also filed affidavit as to unknown owners and an affidavit of publication. In addition to serving the named defendants either personally or through substitute service, plaintiff followed the procedure to

serve by publication. Aaron Lebovic appeared in the case and remained active in defending his interest in the subject property. No other defendant filed an appearance and answer.

¶ 7 Prior to moving for summary judgment, based on representations made Aaron Lebovic, plaintiff filed a motion for access to inspect the subject property. Plaintiff filed an emergency motion to be placed in possession, which was granted on August 29, 2011. It also had to file a motion to compel in order to obtain a copy of the lease. A copy of the lease showed that it was set to expire on September 30, 2011. Plaintiff then filed a third amended motion for default as to those individuals who had not filed an appearance in the matter. It also filed a motion for summary judgment as to Aaron Lebovic. On November 14, 2011, the trial court entered judgment of foreclosure in favor of Plaintiff. After the end of the redemption period, the subject property proceeded to a judicial sale with the court subsequently entering an order approving the sale.

¶ 8 On July 10, 2014, defendants, Marta Modrzanska and Marek Modrzanski (hereinafter defendants), filed a petition to quash service pursuant to sections 2-1401 and 2-301. The parties then briefed the issue and on March 5, 2015, the trial court denied the petition to quash. Defendants then filed a motion to reconsider. On August 31, 2015, the trial court ordered defendants to file a transcript of the prior proceedings. Defendants failed to file the transcript and on September 29, 2015, the trial court denied defendants' motion to reconsider. Defendants timely filed their notice of appeal.

¶ 9 ANALYSIS

¶ 10 Before discussing the merits of defendants' appeal, we must admonish defendants for their failure to file a brief in compliance with Illinois supreme court rules. Illinois supreme court Rule 341(h)(6) requires an appellant's brief to include a statement of facts "with appropriate

reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016). Additionally, Illinois supreme court Rule 341(h)(7) requires the appellant's argument section to include citations to authorities and pages from the record from which it relied on. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). Finally, Illinois supreme court Rule 342 requires an appellant's brief to include an appendix. Ill. S. Ct. R. 342(a) (eff. Jan 1, 2005). The appendix shall include "a table of contents to the appendix, a copy of the judgment appealed from, any opinion, memorandum, or finding of fact filed or entered by the trial judge." *Id.*

¶ 11 Pro se litigants are not excused from following the rules that dictate the form and content of appellate briefs. *In re Marriage of Barile*, 385 Ill. App. 3d 752, 757 (2008). Defendants' statement of facts and argument sections fail to comply with Rule 341 because there are no citations to the record, while the brief also fails to include an appendix in violation of Rule 342. While the rules of appellate procedure are not merely suggestions (*Chicago Title & Trust Co. v. Weiss*, 238 Ill. App. 3d 921, 928 (1992)), striking a brief is appropriate only when the violations of the rules hinder our review (*Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 15). Defendants' brief fails to conform to the applicable Illinois supreme court rules, but does not prevent us from reaching the merits of this appeal. However to the extent defendants have made a legal argument, their appeal fails on the merits.

¶ 12 "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. It appears from the record, and the parties do not contest, that the trial court's denial of defendants' motion to quash was based purely on the memorandums submitted to the court. Accordingly, our review is *de novo*.

¶ 13 Defendants essentially argue that as non-record claimants, they were not served properly because they were not specifically named in the foreclosure action. The record reveals that defendants were tenants of the subject property with an unrecorded lease that had a termination of September 30, 2011. Section 15-1501(a) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) states that "only (i) the mortgagor and (ii) other persons (but not guarantors) who owe payment of indebtedness or the performance of other obligations secured by the mortgage and against whom personally liability is asserted shall be necessary parties defendant in a foreclosure." (735 ILCS 5/15-1501(a) (West 2010). Defendants admit that they are neither of the entities listed in this section. Accordingly, they were not required to be named as a party in the initial foreclosure action.

¶ 14 Section 15-1502 deals with the rights of nonrecord claimants, like defendants, in a residential foreclosure proceeding. Section 15-1502(b) provides "a nonrecord claimant who is given notice of the foreclosure as provided in paragraph (2) of subsection (c) of Section 15-1502 shall be barred and terminated by any judgment of foreclosure to the same extent as if such claimant had been a party." 735 ILCS 5/15-1502(b) (West 2010). Importantly, section 15-1502(c)(1) states that an "affidavit need not state that inquiry has been made to ascertain the names or present or last known places or residence of such nonrecord claimants, and no such inquiry need be made." 735 ILCS 5/15-1502(c)(1) (West 2010). Paragraph 2 of section 15-1502(c) provides, "at least 30 days prior to the entry of a judgment of foreclosure, any person identified in the affidavit described in paragraph (1) of subsection (c) of Section 15-1502 shall be given a notice of the foreclosure complying with the requirements of Section 15-1503 by the party filing the affidavit." 735 ILCS 5/15-1502(c)(2) (West 2010). Section 15-1503(a) of the Foreclosure Law provides that a properly recorded notice of foreclosure "shall be constructive

notice of the pendency of the foreclosure to every person claiming an interest in or lien on the mortgaged real estate, whose interest or lien has not been recorded prior to the recording of such notice of foreclosure." 735 ILCS 5/15-1503(a) (West 2010).

¶ 15 The record demonstrates, and defendants do not argue otherwise, that their leasehold interest was not recorded. While not included in the record, a review of the Cook County Recorder of Deeds website demonstrates that plaintiff filed a *lis pendens* foreclosure notice on March 23, 2010.[1] Thus, it cannot be disputed that defendants received constructive notice pursuant to section 15-1503(a). Furthermore, defendants admit they were served with a copy of the foreclosure complaint on March 21, 2010 and they therefore had actual notice of the foreclosure action. Despite both actual and constructive notice, defendants took no action for 4 years after the case was filed and 3 years after the court entered a judgment of foreclosure. For these reasons, we reject defendants' argument that the failure to name them as a party-defendant in the initial foreclosure action or amend the foreclosure complaint to include them as a party was in any way improper in this proceeding.

¶ 16 In arguing for a contrary result, defendants rely exclusively on *Applegate Apartments Ltd. Partnership v. Commercial Coin Laundry Systems*, 276 Ill. App. 3d 433 (1995). In *Applegate*, a mortgagee filed a complaint for foreclosure without naming a tenant as a party. In its affidavit of service in the foreclosure proceeding, an agent for the mortgagee crossed out the words "on due inquiry" and "upon diligent inquiry" and indicated that "on information and belief" additional interested parties could not be found. *Applegate*, 276 Ill. App. 3d at 437. Twenty days after a consent foreclosure judgment was entered, the mortgagee sent an introductory letter to the tenant, but the letter did not mention the foreclosure action or demand

[1] Judicial notice is proper where the document in question is part of the public record and where such notice will aid in the efficient disposition of a case. *Muller v. Zollar*, 2676 Ill. App. 3d 339, 341-42 (1994).

that the tenant vacate the premises. *Id.* Six months later, the mortgagee sold its interest in the property to the plaintiff, which then sent the tenant a letter demanding possession of the premises. *Id.* The purchaser thereafter filed an action under the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq*. (West 1992)). The circuit court granted summary judgment to the tenant, and on appeal, that portion of the circuit court's ruling was affirmed. In so ruling, the *Applegate* court reasoned that the foreclosure judgment did not bind the tenant, because the tenant was never notified or made a part of that action and because the record established that the mortgagee did not exercise due diligence in attempting to ascertain the tenant's identity. *Id.* at 440.

¶ 17 We find defendants' reliance on *Applegate* misplaced. The tenant in *Applegate* had neither actual nor constructive notice of the foreclosure proceedings until after a judgment of foreclosure had been entered. By their own admission defendants received notice of the foreclosure action a year before a judgment of foreclosure was entered but took no action for almost 3 years after that. Furthermore, the tenant in *Applegate* had a lease agreement that had a year left on it when the trial court foreclosed on the property, while here the defendants' lease agreement expired a month before the trial court entered a judgment of foreclosure. For these reasons, we do not take guidance from *Applegate*, and we adhere to our conclusion above.

¶ 18 CONCLUSION

¶ 19 Based on the foregoing, we affirm the decision of the circuit court denying defendant's motion to quash.

¶ 20 Affirmed.