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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

BANK OF AMERICA, N.A.,)	Appeal from the Circuit Court
)	of Kendall County.
Plaintiff-Appellee,)	
)	
v.)	No. 10-CH-660
)	
TERESA I. PATERKIEWICZ,)	
)	
Defendant-Appellant)	
)	
(West Suburban Bank, Lakeview Estates)	
West Duplex Homeowners' Association,)	
Unknown Heirs and Legatees of Teresa I.)	Honorable
Paterkiewicz, Unknown Owners, and)	Alan W. Cargerman,
Nonrecord Claimants, Defendants).)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* Without an official account of the relevant hearing, we could not say that the trial court abused its discretion in denying defendant's postsale motion to vacate a default judgment of foreclosure; plaintiff's failure to file a response to the motion did not constitute an admission that mandated the grant of the motion.

¶ 2 Defendant, Teresa I. Paterkiewicz, the property owner in a foreclosure action, appeals after the trial court denied her motion to vacate the default judgment of foreclosure. She argues that the

court abused its discretion by denying the motion. She further argues that plaintiff, Bank of America, N.A., admitted the motion's claims when it did not file a response. Plaintiff responds that, under the principles of *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-94 (1984), Paterkiewicz has forfeited the issue by failing to provide a transcript or transcript substitute for the relevant hearing. It further argues that a motion is not a pleading, so that the lack of a response is not an admission. We agree with plaintiff on all points, and we therefore affirm the denial of the motion to vacate and thus affirm the confirmation of the judicial sale.

¶ 3 On May 6, 2010, plaintiff (which was the original lender) filed a foreclosure suit relating to the property at 405 Carriage Court in Oswego. It named as defendants Paterkiewicz, West Suburban Bank, the Lakeview Estates West Duplex Homeowners Association, unknown heirs and assigns of Paterkiewicz, and unknown owners and nonrecord claimants. Paterkiewicz was personally served on June 1, 2010.

¶ 4 On August 26, 2010, plaintiff moved for an order of default against Paterkiewicz and the other named defendants, and the trial court granted it. The court entered a judgment of foreclosure and sale on August 27, 2010. Sale was originally set for January 3, 2011.

¶ 5 On February 16, 2011, "The Fish Brydges and Associates, LLC" filed its appearance for Paterkiewicz. She then filed a motion to vacate the default judgment. An agreed order resulted in the continuance of the motion until October 11, 2011.

¶ 6 On September 2, 2011, Fish Brydges and Associates moved to withdraw as counsel for Paterkiewicz—later filings showed that the firm was dissolving. The trial court granted the motion.

¶ 7 On October 11, 2011, with Paterkiewicz not appearing in court, the court struck Paterkiewicz's motion "without prejudice" for want of prosecution. The judicial sale was reset and renoticed for January 9, 2012; it took place as scheduled.

¶ 8 Plaintiff moved to confirm the sale, and, on February 15, 2012, the trial court granted the motion and entered an order of possession.

¶ 9 The next day, Paterkiewicz filed a motion to vacate the default judgment of foreclosure. She alluded to the change of counsel and asserted that, based on probabilities, she expected to find violations of the federal Truth in Lending Act, the federal Real Estate Settlement Procedures Act, the Illinois Notary Act, the Recorders Act, and the Conveyances Act. She had ordered an audit and expected the results in "the next 30-60 days." The trial court denied the motion on March 5, 2012. No transcript or its substitute of that hearing is part of the record on appeal. Paterkiewicz filed a timely notice of appeal.

¶ 10 On appeal, the parties make the arguments that we described in the introduction to this order. We agree with plaintiff that the disposition of the motion to vacate was a matter for the discretion of the court, such that, under the principles of *Foutch*, we must affirm the court's denial of the motion unless the record is sufficient to show that the court abused its discretion. We also agree that plaintiff's failure to file a written response to Paterkiewicz's motion did not make granting the motion nondiscretionary. We therefore hold that, because a complete record is absent, we must affirm the motion's denial and, because Paterkiewicz has raised no other challenges to the final judgment, the confirmation of the judicial sale. We do not consider whether a vacatur of the default judgment of foreclosure would affect the status of the confirmation judgment; such an analysis could not affect the overall result here.

¶ 11 The general standard of review applicable to a court's ruling on a motion to vacate a default judgment is abuse of discretion. *W.M. Mold & Tool v. DeRosa*, 251 Ill. App. 3d 433, 439 (1993). Under the supreme court's holding in *Foutch*, the party challenging a ruling on appeal has the burden of presenting a record that supports its claim of error. Showing that a ruling was an abuse of discretion requires showing that the trial court's reasoning was flawed. Such a showing will generally require documentation of the court's reasoning. See *Foutch*, 99 Ill. 2d at 392. Because nothing in the record shows the court's basis for denying the postconfirmation motion to vacate, Paterkiewicz can prevail only if she can show that the circumstances here were such that granting the motion was mandatory.

¶ 12 Paterkiewicz has attempted to do just that, but has failed. She argues that, because plaintiff did not file a response to the motion to vacate, it admitted the motion's allegations. In support of this claim, she cites *Colonial Penn Insurance Co. v. Tachibana*, 53 Ill. App. 3d 981, 982-83 (1977), which notes that it is settled law that "well-pleaded allegations of a complaint are considered admitted by a defendant's default for failure to plead to the complaint." The flaw in this argument is that a motion is not a pleading, so that the failure to file a written response does not result in admission of a motion's assertions. A pleading is a party's formal statement of his or her claims or defenses, whereas a motion is a request to the court for a ruling or order in a case already pending. *KSAC Corp. v. Recycle Free, Inc.*, 364 Ill. App. 3d 593, 597 (2006). As plaintiff correctly points out, oral motions can be effective (*e.g.*, *In re Justin L.V.*, 377 Ill. App. 3d 1073, 1081 (2007)); by implication, so can an oral response to a motion. Moreover, courts have a general power to control procedure for purposes of orderly and expeditious disposition of cases. *In re Marriage of Thomas*, 339 Ill. App. 3d 214, 223 (2003). Courts thus may decide motions at the hearings where they are

made; that is, courts decide them without allowing responses and replies. Thus, that plaintiff filed no response to the motion did not affect the trial court's discretion to deny it.

¶ 13 Because Paterkiewicz cannot show that a rule of law required the court to grant her motion, the *Foutch* principles apply. Thus, lacking a record of the court's reasons for denying the motion, we must presume that those reasons were proper and affirm the denial.

¶ 14 For the reasons stated, we affirm the denial of Paterkiewicz's motion to vacate the default judgment of foreclosure and therefore affirm the confirmation of the judicial sale.

¶ 15 Affirmed.