2016 IL App (3d) 140583-U

Order filed January 8, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

BANK OF AMERICA, N.A., successor by merger to BAC HOME LOANS SERVICING, L.P., f/k/a COUNTRYWIDE HOME LOANS SERVICING, L.P.,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,	)	Appeal No. 3-14-0583 Circuit No. 09-CH-1023
v.	)	
JUSTIN M. ALBRECHT a/k/a JUSTIN ALBRECHT, *et al*.,	)	Honorable Thomas A. Thanas,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying defendant's motion to vacate the default judgment and his motions to set aside the judicial sale following the entry of a foreclosure judgment.

¶ 2 Plaintiff, Bank of America, N.A., successor by merger to BAC Home Loans Servicing, L.P., filed a mortgage foreclosure action involving property owned by defendant, Justin M.

Albrecht. The trial court entered a default judgment against Albrecht and the property was sold at a judicial sale. Albrecht appeals from the trial court's denial of his motion to vacate the default judgment and his motions to stay and set aside the judicial sale. We affirm.

¶ 3 BACKGROUND

¶ 4 In April of 2007, Castle Point Mortgage extended a loan in the amount of $305,990 to Albrecht at an interest rate of 7.5%, with monthly payments of $2,139.53. The loan was secured in exchange for a promissory note and a 30-year adjustable rate mortgage on property located in Lockport. The mortgage identified Mortgage Electronic Registration Systems, Inc. (MERS) as the mortgagee and indicated that MERS would act as nominee for Castle Point and its successors and assigns.

¶ 5 As of September 1, 2007, Albrecht failed to make timely payments under the loan. MERS assigned the mortgage to Countrywide Home Loans on February 7, 2008, and Castle Point indorsed the note in blank. The assignment was recorded in the recorder of deeds office on March 13, 2008.

¶ 6 Countrywide Home Loans filed a complaint seeking to foreclose the mortgage on February 8, 2008. To avoid foreclosure, Albrecht entered into a loan modification agreement with Countrywide Home Loans on June 11, 2008. The modified interest rate was 5.5%, and the outstanding principle balance due on the loan as of July 1, 2008, was $326,514.79. Albrecht agreed to make monthly payments of $1,684.07, beginning on July 1, 2008, and continuing until the principal and interest were paid in full, with a maturity date of June 1, 2048.

¶ 7 Albrecht again failed to make payments under the loan. On February 18, 2009, Countrywide Home Loans assigned Albrecht's mortgage to Countrywide Home Loans Servicing,

and on February 19, 2009, Countrywide Home Loan Servicing filed a complaint to foreclose the mortgage.

¶ 8 After filing its foreclosure complaint, Countrywide Home Loan Servicing changed its name to BAC Home Loan Servicing, and Bank of America became the successor by merger to BAC Home Loan Servicing. As a result, the trial court entered an order substituting Bank of America as the named plaintiff.

¶ 9 In July of 2009, Albrecht entered into a second loan modification, this time under the residential mortgage loan servicing standards of the Home Affordable Modification Program (HAMP) ((see 12 U.S.C. § 5219 (2009)). Albrecht made two payments under the HAMP trial period plan but failed to make the remaining payments due.

¶ 10 On May 4, 2012, plaintiff filed a motion for default judgment and gave Albrecht notice that the motion would be heard on May 9, 2012. At the hearing on May 9, Albrecht appeared *pro se* and requested time to consult with an attorney. Albrecht was allowed 28 days to file an answer to the foreclosure complaint, and the matter was continued to June 13, 2012.

¶ 11 On June 13, Albrecht failed to appear. Bank of America presented an affidavit in support of the judgment, signed by its assistant vice president, which attested to the costs, fees and other mortgage expenses due on the note. The trial court found the "[p]roofs by affidavit *** sufficient" and entered a default order and a judgment for foreclosure and sale of the Lockport property.

¶ 12 Albrecht filed a bankruptcy petition in federal court on June 28, 2012, and his personal liability on the loan was discharged.

¶ 13 On January 22, 2013, plaintiff served Albrecht with notice of a judicial sale scheduled for February 13, 2013. The next day, Albrecht filed a motion to vacate the default judgment,

claiming that (1) the unverified complaint was factually incorrect, (2) the attached affidavit was inadequate, and (3) the judgment was based on unrecoverable fees and charges. The trial court denied Albrecht's initial motion to vacate without prejudice.

¶ 14 Albrecht filed an amended motion to vacate on March 6, 2013, arguing that accord and satisfaction and lack of standing were meritorious defenses that defeated foreclosure. He also claimed due diligence in raising the defenses. Following a hearing, the trial court found that defendant's claims lacked merit and denied his amended motion.

¶ 15 On June 30, 2013, Albrecht submitted a loan modification application to the Federal Home Loan Mortgage Corporation (otherwise known as Freddie Mac). In response to his application, Albrecht received a letter in July of 2013 acknowledging receipt of the application and advising him that he was being reviewed for a standard, non-HAMP, loan modification.

On August 15, 2013, prior to the judicial sale scheduled for August 29, 2013, Albrecht filed a motion to stay the sale, claiming that his 2013 HAMP loan modification application was pending and that an eligibility determination could take 20 to 60 days. The trial court ordered the sheriff's sale to be stayed pending Albrecht's loss mitigation efforts and requested that the parties submit information as it became available.

¶ 16 On October 2, 2013, the trial court denied the motion to stay and ordered that the sale be scheduled for October 24, 2013. The sale was subsequently canceled and rescheduled for January 23, 2014, and rescheduled again for February 20, 2014.

¶ 17 Meanwhile, Albrecht was advised that his loan application was denied by letter on November 7, 2013. A representative of the Freddie Mac later explained to Albrecht that he was not eligible for a loan modification under HAMP because he failed to make all of the payments under his 2009 HAMP trial period plan.

¶ 18 Prior to the sale, Albrecht filed another motion to stay, claiming that plaintiff violated section 15-1508(d-5) of the Illinois Mortgage Foreclosure Law (Mortgage Foreclosure Law) (735 ILCS 5/15-1508(d-5) (West 2012)) by failing to review his modification request under HAMP when he applied for a second loan modification in 2013. The trial court denied the motion without prejudice, finding that a motion to stay pursuant to the Mortgage Foreclosure Law could not be brought before the judicial sale. The sale proceeded on February 20, 2014.

¶ 19 Following the sale, plaintiff filed a motion for order approving the report of sale and distribution. Albrecht filed a motion to set aside the sale. The trial court denied Albrecht's motion to set aside the sale and granted plaintiff's motion to confirm.

¶ 20 ANALYSIS

¶ 21 I

¶ 22 Albrecht argues that the trial court did not have the authority to enter the foreclosure judgment and sale without a written motion for entry of judgment for foreclosure and sale. He argues that the local court rule governing administrative procedures for setting and filing motions requires that all motions must be filed in the clerk's office at least two days before the hearing and, since no motion entitled "Motion for Judgment of Foreclosure and Sale" is in the record, the foreclosure judgment is void.

¶ 23 Illinois Supreme Court Rule 21(a) vests the circuit courts with the power to adopt local rules governing civil and criminal cases so long as the rules do not conflict with supreme court rules or statutes and, as practicable, are uniform throughout the state. Ill. S. Ct. R. 21(a) (eff. Dec. 1, 2008). In accordance with Supreme Court Rule 21(a), Will County has established various local rules for filing motions. Will County Local Rule 4.02 provides:

> "All motions must be filed with the Clerk and listed in the Motion Book to be kept by the Clerk before 4:30 P.M. two days prior to the day they are to be presented, except emergency motions, and the same shall be heard in the order in which they are listed in the Motion Book." 12th Judicial Cir. Ct. R. 4.02 (eff. Jan. 1, 2012).

¶ 24 Pursuant to Rule 4.02, plaintiff served Albrecht with a notice of motion indicating that it would appear before the circuit court and present a "Motion for Default, Motion to Substitute Party Plaintiff, and Judgment of Foreclosure and Sale." The notice did not specifically mention a "Motion for Judgment of Foreclosure and Sale."

¶ 25 In response to the notice, Albrecht appeared in court and was granted a continuance to file an appearance and answer to the complaint. The trial court also continued plaintiff's motions for default and for judgment of foreclosure and sale. Albrecht then failed to appear for the continued hearing, at which the motion for judgment of foreclosure was presented. The trial court entered an order of default judgment against Albrecht based on his failure to answer or appear.

¶ 26 Despite these circumstances, Albrecht contends that the trial court's judgment of foreclosure is void because plaintiff failed to file a motion entitled "Motion for Judgment of Foreclosure and Sale." However, he fails to cite any authority for the proposition that the failure to comply with a local court rule concerning the manner in which a motion is filed constitutes a jurisdictional defect. Additionally, Albrecht does not allege that he was prejudiced by plaintiff filing a "Motion for Default and Judgment of Foreclosure and Sale" without designating the request for judgment of foreclosure as a separate motion.

¶ 27 In *VC & M, Ltd. v. Andrews*, 2013 IL 114445, the Illinois Supreme Court held that the plaintiff's e-filing of a motion to reconsider without the required written order under local rules did not deprive the trial court of jurisdiction to consider the motion. *VC & M*, 2013 IL 11445, ¶ 25. The court recognized that "a trial court has discretion to impose sanctions on a party for an abuse of procedural rules" and held that the trial court could choose whether to sanction the plaintiff for violating the local rule or to consider the motion on the merits. *Id*. ¶¶ 25-26. The supreme court noted that the local rule violation was brought to the trial court's attention and the defendants did not claim any prejudice. It concluded that the trial court's decision to consider the e-filed motion on the merits was within its discretion. *Id*. ¶ 27.

¶ 28 Here, plaintiff's violation of the Will County local rule did not deprive the circuit court of jurisdiction to enter the judgment of foreclosure. The trial court had discretion to sanction plaintiff for its violation or consider the matter on the merits. It chose to consider the request for entry of judgment of foreclosure and sale on the merits. The record demonstrates that the violation was brought to the trial court's attention in Albrecht's motion to vacate and his amended motion to vacate and that Albrecht failed to demonstrate any prejudice resulting from the violation in either motion. The record also shows that Albrecht received notice of plaintiff's intent to request entry of the foreclosure judgment and appeared in court on the day the motion was initially presented. Given that he was aware of the foreclosure proceedings and the potential judgment and sale, the trial court properly exercised its discretion in considering the merits of the motion. Thus, the judgment of foreclosure and sale is not void.

¶ 29 II

¶ 30 Next, Albrecht claims that the trial court applied the incorrect standard when it considered his motion to vacate default judgment pursuant to section 2-1401 of the Code of Civil

Procedure (735 ILCS 5/2-1401 (West 2012)). He maintains because there is no final judgment in a foreclosure action until the sheriff's sale has been confirmed by the circuit court, the judge was required to rule on his motion to vacate default judgment pursuant to section 2-1301(e) (735 ILCS 5/2-1301(e) (West 2012)).

¶ 31 "In the absence of a Supreme Court Rule 304(a) finding in the judgment of foreclosure, it is the order confirming the sale, rather than the judgment of foreclosure, that operates as the final and appealable order in a foreclosure case." *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 12. However, a foreclosure judgment is final and immediately appealable where it contains the necessary language that there is no just reason for delaying enforcement or appeal. *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 260 (2008). In that case, a motion to vacate the judgment of foreclosure brought more than thirty days after entry of the judgment is properly characterized as a section 2-1401 petition rather than a section 2-1301(e) motion. *Id*. at 259-61.

¶ 32 Here, the judgment of foreclosure included a Rule 304(a) finding. Therefore, Albrecht's motions to vacate were properly characterized as section 2-1401 petitions for relief from judgment, which require the moving party to demonstrate due diligence and a meritorious defense. See *id*. at 260; *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986).

¶ 33 III

¶ 34 In the alternative, Albrecht claims that the trial court erred in denying his motion to vacate the default judgment under section 2-1401 of the Code of Civil Procedure on the basis of several meritorious defenses. He argues that the foreclosure judgment should be vacated because (1) the affidavit submitted at the default judgment proceeding did not support the allegations made in the unverified complaint, (2) the judgment affidavit contained numerous inconsistencies

regarding the sums of money due, and (3) plaintiff lacked standing to file a foreclosure complaint against him.

¶ 35 A. Affidavit in Support of Judgment

¶ 36 Albrecht first argues that under the Mortgage Foreclosure Law, where no answer is filed and the complaint is not verified, a plaintiff must supply a separate affidavit setting forth the facts alleged in the complaint before judgment can be entered against a defendant. In support of his argument, Albrecht cites section 15-1506 of the Mortgage Foreclosure Law.

¶ 37 Section 15-1506(a)(1) provides:

> "[W]here an allegation of fact in the complaint is not denied by a party's verified answer or verified counterclaim, *** a sworn verification of the complaint or a separate affidavit setting forth such fact is sufficient evidence thereof against such party and no further evidence of such fact shall be required." 735 ILCS 5/15-1506(a)(1) (West 2012).

The language of subsection 15-1506(a) applies to evidence required "in the trial of a foreclosure." Section 15-506(c) further explains that "nothing in this Section 15-1506 shall prevent a party from obtaining a summary or default judgment authorized by Article II of the Code of Civil Procedure." 735 ILCS 5/15-1506(c) (West 2012). The citation to article II of the Code of Civil Procedure refers to the default judgment provision of the code, which states that default judgments may be entered for "want of an appearance, or for failure to plead." 735 ILCS 5/2-1301(d) (West 2012).

¶ 38 In entering a default judgment, the court may require proof of the allegations of the pleading through an affidavit. 735 ILCS 5/2-1301(d) (West 2012). However, such proof is not necessarily required. *Ward v. Rosenfeld*, 204 Ill. App. 3d 908 (1990).

¶ 39 Here, the record demonstrates that the trial court considered the judgment affidavit at the default hearing held on June 13, 2012. The trial court also considered the original note, the mortgage and the two assignments, all of which were attached to the complaint. The trial court reviewed these documents and stated that "[p]roofs by affidavit [were] found to be sufficient." The court was within its discretion under the Mortgage Foreclosure Law and the Code of Civil Procedure to make that finding.

¶ 40 B. Inconsistencies in the Affidavit

¶ 41 Albrecht also claims that there are monetary inconsistencies between the judgment affidavit and the record. First, Albrecht challenges the escrow costs listed on the affidavit, claiming that they are unrecoverable fees and charges. The escrow costs were necessary fees advanced under the terms of the mortgage for property taxes, insurance and other escrow items identified in the judgment affidavit. A loan servicer is required to advance escrow funds under applicable federal regulations and can seek prepayment for the deficiency in the escrow account. 12 CFR 1024.17(k)(1),(2) (2011). Thus, any deficiency created by the advancement of funds for the escrow items became an additional amount owed by Albrecht that was properly included in the judgment affidavit calculation.

¶ 42 Albrecht also disputes the amount of real estate taxes reported on the judgment affidavit. However, records from the Will County Treasurer demonstrate that $42,076.30 in property taxes was paid between 2007 and 2012.

¶ 43 In addition, he claims that the principal balance amount provided in the affidavit of $326,327.25 represents a "wrongful" $20,000 exaggeration of the original mortgage amount. Again, the record supports this amount. The loan's original principle amount due was $305,990. However, the 2008 loan modification agreement clearly indicates that it modified the outstanding

principle balance due on the loan to $326,514.79 as of July 1, 2008. Thus, the principle balance reported in the affidavit does not reflect an arbitrary inflation of $20,000.

¶ 44 Albrecht's remaining claims regarding payments not reflected in the affidavit and hazard insurance premiums are unsupported by citation in his brief and rebuffed by the record on appeal.

¶ 45 C. Standing

¶ 46 Albrecht also challenges the assignments of the mortgage that are attached to the complaint filed in 2009. He notes that they are signed by William McAlister, "as the assignor and the assignee," and claims that plaintiff lacks legal standing because such conduct "violates the Illinois Rules of Professional Conduct."

¶ 47 Albrecht urges us to vacate the default judgment as a matter of principle. However, he fails to cite any legal authority in support of his position. Moreover, his argument is based on a misreading of the record. Two assignments of the mortgage are attached to the complaint. The first assignment assigns the mortgage from MERS to Countrywide Home Loans. It is executed by William McAllister and includes a notary stamp indicating that McAllister is known to the notary to be an authorized agent of MERS. The second assignment, executed one year later, assigns the mortgage from Countrywide Home Loans to Countrywide Home Loan Servicing. It is also signed by McAllister, as the authorized agent for Countrywide Home Loans and is stamped by a notary verifying that McAllister is known to her to be the assignor's agent. Although McAllister was the assignor for both documents, Albrecht is unable to cite any authority for his argument that McAllister cannot be an authorized signatory for two separate legal entities who execute separate documents that are signed and dated a year apart. Moreover, regardless of a violation of the rules of professional conduct, Albrecht does not have standing to

challenge an assignment deficiency. See *Bank of America National Ass'n v. Bassman FBT, L.L.C.*, 2012 IL App (2d) 110729, ¶ 15 (noting that the prevailing rule is that a litigant lacks standing to attack an assignment to which he or she was not a party). Under these facts, Albrecht failed to establish a meritorious standing defense. Accordingly, the trial court's denial of his motion to vacate the default judgment under section 2-1401 of the Code of Civil Procedure is affirmed.

¶ 48 IV

¶ 49 Next, Albrecht argues that the trial court erred in refusing to grant his motion to stay the sale pursuant to section 1508(d-5) of the Code of Civil Procedure. Albrecht claims that the trial court erred in ruling that the motion was not ripe under section 1508(d-5) because the foreclosure sale had not yet occurred.

¶ 50 Section 1508(d-5) states:

> "The court that entered the judgment shall set aside a sale held pursuant to Section 15-1507, upon motion of the mortgagor at any time prior to the confirmation of the sale, if the mortgagor proves by a preponderance of the evidence that (i) the mortgagor has applied for assistance under the Making Home Affordable Program ***, and (ii) the mortgaged real estate was sold in material violation of the program's requirement for proceeding to a judicial sale." 735 ILCS 5/15-1508(d-5) (West 2012).

¶ 51 The most reliable indicator of legislative intent is the plain language of a statute. *People v. Perry*, 224 Ill. 2d 312, 323 (2007). In determining the plain meaning of statutory terms, we consider the statute in its entirety and its subject matter. *People v. Davis*, 199 Ill. 2d 130, 135

(2002). Where the statutory language is clear and unambiguous, we must apply it as written without resort to extrinsic aids of construction. *People v. Glisson*, 202 Ill. 2d 449, 504 (2002).

¶ 52 The language of section 1508(d-5) is plain and unambiguous. It states that the court should set aside a sale "held pursuant to Section 1507" if the court determines prior to the confirmation of the sale that the property "was sold in material violation" of the Making Home Affordable program. The provision clearly indicates that the legislature intended to provide a process by which the sale could be stayed after it had occurred but prior to the confirmation as a protection mechanism for homeowners seeking federal assistance. Here, Albrecht filed his motion to stay before the sale had occurred, and the motion was heard the day before the scheduled sale. Thus, his request to stay the sale was premature under section 1508(d-5). Therefore, the trial court did not err in denying his motion without prejudice.

¶ 53 V

¶ 54 Albrecht also claims that the trial court abused its discretion in denying defendant's motion to vacate the February 20, 2013, sale because Freddie Mac failed to reevaluate his HAMP application. Albrecht argues that Freddie Mac's refusal to reevaluate him after he filed for bankruptcy is against Illinois law, citing *Citimortgage, Inc. v. Johnson*, 2013 IL App (2d) 120719.

¶ 55 In *Johnson*, the plaintiff filed a foreclosure complaint and, in response, the homeowners sought a loan modification under the Making Home Affordable Program and HAMP. Plaintiff denied the homeowners' request on the basis of a negative net present value (NPV) of the loan modification. Meanwhile, the homeowners filed a voluntary petition for chapter 7 bankruptcy (11 U.S.C. §701 *et seq*. (2006)), and then filed a second HAMP application requesting a loan

modification. The mortgage loan servicer proceeded with the sheriff's sale without reviewing the homeowners' second application. *Id*. ¶¶ 4-11.

¶ 56 The appellate court held that the failure of the loan servicer to review the second application under HAMP was a material violation that prevented confirmation of the sale under section 15-1508(d-5) of the Mortgage Foreclosure Law. *Johnson*, 2013 IL App (2d) 120719, ¶ 36. Interpreting the guidelines for non-government sponsored enterprise loans, the court noted that "[b]ankruptcy affects a credit score, which in turn affects an NPV analysis, which in turn affects whether a borrower will receive assistance under HAMP." *Id*. ¶ 32.

¶ 57 This case is distinguishable. The Freddie Mac guidelines considered by plaintiff here are not the same guidelines that govern services of non-government sponsored loans as reviewed in *Johnson*. Also, Albrecht's 2009 loan modification application was not denied; it was approved for a trial plan under HAMP. After Albrecht failed to make the required payments under the trial plan, plaintiff filed a second foreclosure complaint.

¶ 58 Under the Freddie Mac guidelines, a borrower becomes ineligible for reconsideration under HAMP if the borrower fails to make all the required payment under a HAMP trial period plan. See Freddie Mac Single-Family Seller/Servicer Guide, R. 65.4(b) (December 18, 2012) (Freddie Mac Guide), available at www.freddiemac.com/singfamily/guide. Although borrowers who were denied a HAMP loan modification are permitted to request reconsideration at a future time if they experience a material change in circumstances, the rule specifies that a borrower may not request reconsideration if he or she would otherwise be illegible under section C65.4(b). See Freddie Mac Guide, R. C65.4(b). Unlike the homeowners in *Johnson*, Albrecht was approved for a HAMP trial period plan and then failed to make the payments under the plan.

Therefore, Albrecht may not request HAMP reconsideration regardless of his bankruptcy discharge.

¶ 59 A borrower challenging a judicial sale under section 15-1508(d-5) must prove by a preponderance of the evidence that the sale took place in "material violation" of the HAMP guidelines. See *Johnson*, 2013 IL App (2d) 120719, ¶ 33; Freddie Mac Guides, R. C65.4(b). Because plaintiff did not violate the program's guidelines by allowing the sale to proceed without considering Albrecht's second HAMP application, the trial court properly denied Albrecht's motion to vacate the sale under section 15-1508(d-5).

¶ 60 VI

¶ 61 Last, Albrecht argues that the trial court did not have authority to confirm the sale because the report of sale and distribution was not attached to the motion for approval and plaintiff's failure to provide notice of the report violated the circuit court's local rules.

¶ 62 Will County Local Rule 11.03(I) lists the supporting documents that must be attached before a motion for confirmation can be granted:

> "Following the filing of the report of sale by the Court's Auctioneer, the plaintiff shall be responsible for presenting to the Court for approval an order confirming the sale with all necessary supporting documents, including but not limited to, proof of publication, notice of sale, and notice of motion for presentation of the order confirming sale, a copy of the certificate of sale, and if applicable, all proof required by the Court for the entry of a deficiency judgment." 12th Judicial Cir. Ct. R. 11.03(I) (eff. Jan. 1, 2012).

¶ 63 Plaintiff filed all of the supporting documents in advance of the hearing on the motion to confirm. Albrecht fails to cite any authority for his argument that filing the report of sale with the clerk does not satisfy the requirements for presenting a motion to confirm to the trial court.

¶ 64 Even if filing the report with the clerk was insufficient under Will County Rule 11.03(I), the Mortgage Foreclosure Law provides an exclusive list of factors that allow the circuit court to deny confirmation of a sheriff's sale. See 735 ILCS 5/15-1508(b) (West 2012). Failure to present documents to the court in violation of local rules is not a factor that requires the court to deny a motion to confirm. *Id*; see also *Citimortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 59.

¶ 65 While we do not condone a party's failure to comply with local filing rules, it is within the circuit court's discretion to determine the appropriate sanction for an alleged violation of those rules; the circuit court may decide to rule on the merits of the motion despite those violations. See *VC & M*, 2013 IL 114445, ¶ 26-27. In this case, Albrecht argued the circuit court rule violations to the trial court. The court considered the violations and chose to confirm the sale. We find no reason in the record to overturn that decision.

¶ 66 Albrecht also argues that plaintiff violated Illinois Supreme Court Rule 104(b) (Ill. S. Ct. R. 104(b) (eff. Jan 1, 1970)) by failing to provide him with copies of the filed report. When a voidable order is entered without notice in violation of Rule 104(b) "the determining factor is not the absence of notice but whether there was any harm or prejudice to the moving party." *In re Rehabilitation of American Mutual Reinsurance Co.*, 238 Ill. App. 3d 1, 11 (1992).

¶ 67 Here, the report at issue was filed on March 19, 2014, along with the motion for approval of the report of sale and distribution. That same day, the trial court entered its briefing schedule. Albrecht's response was due on April 2, 2014, and plaintiff's reply to the response was due two

weeks later. At the hearing on the motion to confirm, Albrecht's attorney acknowledged that plaintiff had provided all of the documents related to the motion for confirmation upon request and that the record had been filed with the circuit clerk. Accordingly, Albrecht failed to establish that his preparation was compromised or that he was otherwise prejudiced by plaintiff's failure to provide a copy of the report of sale and distribution with notice of the motion requesting confirmation. Absent actual prejudice, we will not reverse the trial court's denial of the motion to vacate or its decision to confirm the sale.

¶ 68 CONCLUSION

¶ 69 The judgment of the circuit court of Will County is affirmed.

¶ 70 Affirmed.